

United States
Circuit Court of Appeals

For the Ninth Circuit.

see vol. 2520

CONSTANCIO R. ALESNA, JOSE BAGOGO BERNAL,
DANIEL RODRIGUES FERREIRA, YUTAKA GO-
HARA, CORNEL IHA, MASASHI KAGEYAMA, TORO-
ICHI KANDA, FRANK GONSALVES PERREIRA,
NOBORU TAKEUCHI, FRED TANIGUCHI and GEN-
KICHI WADA,

Appellants,

vs.

PHILIP L. RICE, as Judge of the Circuit Court for the Fifth
Judicial Circuit of the Territory of Hawaii and WALTER
D. ACKERMAN, JR., as Attorney General of the Terri-
tory of Hawaii,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

FILED

APR 24 1948

PAUL P. O'BRIEN



United States
Circuit Court of Appeals
For the Ninth Circuit.

CONSTANCIO R. ALESNA, JOSE BAGOGO BERNAL,
DANIEL RODRIGUES FERREIRA, YUTAKA GO-
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

For the Plaintiffs, Constancio R. Alesna, et al.:

HARRIET BOUSLOG, and
MYER C. SYMONDS,
206 Terminal Building,
Honolulu 10, Hawaii.

GLADSTEIN, ANDERSEN, RESNER &
SAWYER,
240 Montgomery Street,
San Francisco 4, California.

For the Defendants, Philip L. Rice, and C. Nils
Tavares:

RHODA V. LEWIS, and
MICHIO WATANABE,
Deputy Attorneys General,
Iolani Palace,
Honolulu, T. H.

Amicus Curiae, Hawaii Employers Council:

LIVINGSTON JENKS,
Bank of Hawaii Building,
Honolulu, T. H. [1*]

* Page numbering appearing at foot of page of original certified
Transcript of Record.

In the United States District Court for the
District of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
for the Fifth Judicial Circuit of the Territory
of Hawaii, et al.,

Defendants.

CLERK'S STATEMENT

Time of Commencing Suit: January 31, 1947—
Complaint for Injunction filed.

Names of Original Parties: Constancio R.
Alesna, et al., Plaintiffs; Philip L. Rice, and C. Nils
Tavares, Defendants.

Dates of Filing Pleadings

1947

Feb. 10—Defendants' Objections to Allowance of
Preliminary Injunction.

Feb. 25—Ruling Upon Motion for a Preliminary
Injunction.

July 21—Answer to Complaint of C. Nils Tavares,
Defendant.

July 21—Answer to Complaint.

July 22—Motion for Hearing and Determination of
Defenses Before Trial and Notice of
Motion.

1947

- Aug. 11—Motion to Strike and Notice of Motion.
Aug. 20—Stipulation and Order.
Sept. 4—Motion (to consider whole record). [2]
Dec. 4—Decision Upon Motion for Determination
of Defenses in Advance of Trial F.R.C.P.
12 (d).
Dec. 20—Stipulation and Order.
Dec. 20—Suggestion of Death of Plaintiff Joseph
Mendes and Order of Abatement.
Dec. 22—Judgment and Decree Dismissing Action
and Dissolving Preliminary Injunction.
Dec. 24—Petition for Restoration of Injunction
Pending Appeal.

1948

- Jan. 8—Stipulation and Order Approving Stipu-
lation.
Jan. 8—Order Restoring Injunction Pending Ap-
peal.
Jan. 20—Stipulation and Order Approving Stipula-
tion With Exhibit.

Dates of Issuance of Process

1947

- Jan. 31—Order to Show Cause and Temporary Re-
straining Order.
Feb. 20—Preliminary Injunction.

Proceedings in the above-entitled matter were had
before the Honorable J. Frank McLaughlin, Judge,
United States District Court, District of Hawaii.

Dates of Filing Appeal Documents

1947

Dec. 24—Notice of Appeal.

1948

Jan. 22—Designation of Record on Appeal.

Jan. 27—Order Extending Time to File and Docket
Record With the United States Circuit
Court of Appeals for the Ninth Circuit.

Feb. 10—Bond on Appeal.

Certificate of Clerk to the Above Statement
United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States [3] Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause, the names of the original parties, the dates when the respective pleadings were filed, the name of the judge presiding, and the dates when appeal pleadings were filed and issued in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of February, 1948.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii. [4]

In the United States District Court for the
District of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
for the Fifth Judicial Circuit of the Terri-
tory of Hawaii, et al.,

Defendants.

COMPLAINT FOR INJUNCTION, ORDER TO
SHOW CAUSE, AND TEMPORARY RE-
STRAINING ORDER

Now come plaintiffs above named and for a first
cause of action allege:

I.

The plaintiffs bring and maintain this suit to
redress the deprivation, under color of territorial
law, of rights secured by laws of the United States
providing for equal rights of citizens of the United
States and of persons within the jurisdiction of the
United States, pursuant to Section 41, subdivision
(14) of Title 28 of the United States Code
Annotated.

II.

That the plaintiffs are citizens of the United
States [6] or persons within the jurisdiction of the
United States entitled to the protection of its laws;
that plaintiffs are residents of the Territory of

Hawaii and within the jurisdiction of this Court; that plaintiffs are residents of the County of Kauai in said Territory, which county is in the jurisdiction of the fifth judicial circuit of said Territory; that plaintiffs are members of the International Longshoremen's and Warehousemen's Union, C.I.O., and of Local 149 of said International Longshoremen's and Warehousemen's Union; that said unions are trade unions engaged as such in the Territory of Hawaii, maintaining offices in Honolulu and on the Island of Kauai.

III.

That the defendant, Philip L. Rice, is the regularly appointed and acting judge of the circuit court of the fifth judicial circuit of the Territory of Hawaii.

IV.

That the defendant, C. Nils Tavares, is the regularly appointed and acting Attorney General of the Territory of Hawaii.

V.

That the defendants herein have engaged in a course of conduct, hereinafter fully described, in violation of plaintiff's rights under the Clayton Act (29 U.S.C.A., Sections 52, 53), and the Norris-La Guardia Act (29 U.S.C.A., Sections 101-115); and defendants acting in contravention of these laws of the United States have injured, oppressed and intimidated citizens of the United States, including the individual [7] plaintiffs herein in the free

exercise and enjoyment of the rights and privileges secured to them by these laws of the United States; and that unless restrained defendants will continue in their unlawful conduct.

VI.

That on the 17th day of September, 1946, the Lihue Plantation Company, Limited, filed a Petition for Injunction and Order to Show Cause in said circuit court of the fifth judicial circuit, requesting the defendant Philip L. Rice to issue without hearing, a restraining order in a labor dispute; that the said petition is entitled "The Lihue Plantation Company, Limited, Petitioner, v. International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., respondents, being Equity No. 120 among the records of said court; that a copy thereof is attached hereto and marked Exhibit "A" and made a part hereof as though fully set forth herein.

VII.

That on the 17th day of September, 1946, the defendant, Philip L. Rice issued a temporary re-

straining order ex parte at the request of said Lihue Plantation Company, Limited, in contravention of said Clayton and Norris-LaGuardia Acts; that respondents named in said Lihue Plantation Company Petition thereafter entered an appearance and presented an oral motion [8] to dissolve said Temporary Restraining Order on the ground it was issued without authority of law and in violation of the Norris-LaGuardia Act; that the defendant Philip L. Rice refused to dissolve said Temporary Restraining Order and held that the Norris-LaGuardia Act did not apply to the Territory and to circuit courts of the Territory; that thereafter on the 23rd day of September, 1946, the said defendant Philip L. Rice, acting upon his own initiative, modified the aforesaid temporary restraining order and issued an amended temporary restraining order; that a copy thereof is attached hereto and marked Exhibit "B" and made a part hereof as though fully set forth herein.

VIII.

That on the 29th day of October, 1946, the Grand Jury of the fifth Circuit court of the Territory of Hawaii returned an indictment against plaintiffs wherein it is alleged that plaintiffs unlawfully, feloniously and wilfully disobeyed said amended temporary restraining order; that a copy of said indictment is attached hereto and marked Exhibit "C" and made a part hereof as though fully set forth herein.

IX.

That during all times herein mentioned, a labor dispute existed between the respondents against whom said amended temporary restraining order was issued by the defendant Philip L. Rice and the petitioner therein, The Lihue Plantation Company, Limited; that said labor dispute related to the demands of said respondents for wages and general conditions of employment on behalf of the members of said respondent labor unions, including the plaintiffs herein, some of whom are employed by The Lihue Plantation Company, Limited, and [9] others of whom are employed by other plantation companies on the Island of Kauai.

X.

That the said circuit court of the fifth judicial circuit of the Territory of Hawaii is a court of the United States as defined in the said Norris-LaGuardia Act; that under the terms of that Act no court of the United States has jurisdiction to issue a restraining order or temporary or permanent injunction in a labor dispute without strictly complying with the terms and conditions of the Act; that no such court may under that Act restrain activities made lawful by the Act.

XI.

That the defendant Philip L. Rice, in issuing the temporary restraining order and the amended temporary restraining order, failed to comply with any

of the provisions of said Act required to be complied with before a court of the United States has jurisdiction to issue a restraining order; that the defendant Philip L. Rice in said injunction proceedings by said amended restraining order restrained the respondent labor organizations of which plaintiffs are members from engaging in activity specifically made lawful by said Clayton and Norris-LaGuardia Acts.

XII.

That by virtue of the terms and provisions of said Clayton and Norris-LaGuardia Acts, the defendant Philip L. Rice was at all times herein mentioned without lawful authority or jurisdiction to issue said temporary restraining order or amended restraining order; that plaintiffs by virtue of said [10] Acts had a right to engage in activity unlawfully restrained by said defendant; that by virtue of the terms and provisions of said laws of the United States the amended temporary restraining order is null and void and no contempt proceedings can be predicated upon alleged violation of an unlawful order without depriving the plaintiffs herein of rights secured by said laws of the United States.

XIII.

That the said indictment charging defendants with criminal contempt is wholly predicated upon violation of the void amended restraining order issued by the defendant Philip L. Rice; that the said indictment charges plaintiffs with a crime for

engaging in concert with others in activity specifically made lawful by said Clayton and Norris-LaGuardia Acts.

XIV.

That the defendant Philip L. Rice has set said criminal contempt proceedings on his Calendar for plea on February 4, 1947, and has informed counsel for plaintiffs herein that he intends to proceed forthwith with the trial of plaintiffs herein for contempt of said void amended restraining order issued by him; that the defendant Philip L. Rice has already deprived the plaintiffs herein of rights guaranteed by said laws of the United States; that he has already refused to comply with the provisions of said laws and has restrained activity made lawful therein; that if said defendant is not restrained he will proceed to try plaintiffs for criminal contempt of said circuit court of the fifth judicial circuit for alleged violations of said void Amended Temporary Restraining Order and for engaging in activity specifically made lawful [11] by said laws of the United States.

XV.

That the said defendant C. Nils Tavares as Attorney General will, unless restrained by this court, conduct the prosecution of plaintiffs on the 4th day of February, as aforesaid.

XVI.

That the said defendants by their actions and threats as aforesaid will, unless restrained by this

court, and in utter and complete disregard of the provisions of the Clayton and Norris-LaGuardia Acts deprive plaintiffs of their rights secured by these laws of the United States to be free from any legal restraints or prosecution by a court of the United States for having engaged in concert with others in peaceful picketing during the course of a labor dispute.

XVII.

That plaintiffs have no plain, adequate and speedy remedy at law.

As and for a second separate and distinct cause of action, plaintiffs allege as follows, to wit:

I.

Plaintiffs reiterate and incorporate, as though fully set forth herein, all the allegations in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, XII, XIII, XIV, XV, XVI, and XVII of the first cause of action. [12]

II.

That by the Clayton and Norris-LaGuardia Acts Congress conferred exclusive jurisdiction on the United States District Court for the Territory of Hawaii to issue, after compliance with the provisions of said Act, injunctions in any controversy involving a labor dispute; that it appears in the Petition for Injunction filed with said circuit court for the fifth judicial circuit by The Lihue Plantation Company, Limited, that the restraining order

requested was to restrain trade unions and officers and members of trade unions involved in a labor dispute with said petitioner therein; that the defendant Philip L. Rice was wholly without jurisdiction to proceed and was required by said Acts to dismiss the petition and proceed no further therein; that the said defendant Philip L. Rice being wholly without jurisdiction to issue the temporary restraining order or amended restraining order, the amended restraining order is a nullity and the said defendant is wholly without jurisdiction to try the plaintiffs herein for alleged contempt thereof.

As and for a third separate and distinct cause of action, plaintiffs allege as follows, to wit:

I.

Plaintiffs reiterate and incorporate, as though fully set forth herein, all the allegations in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, XII, XIII, XIV, XV, XVI, and XVII of the first cause of action.

II.

That the Clayton and Norris-LaGuardia Acts specifically [13] secured and guaranteed to all persons and associations within the territory the right to engage in clearly defined types of trade union activity without previous restraint by injunction or fear of subsequent punishment; that among these substantive rights which cannot be restrained and cannot be held or considered to be violations of any law of the United States is the right to engage in concert with others in picketing so long as said pick-

eting is not accompanied by fraud or violence; that the amended temporary restraining order issued by the defendant Philip L. Rice enjoined respondents in said injunction proceedings from engaging in concert in mass picketing; that the violation of said void amended temporary restraining order, charged in the said indictment against plaintiffs, is the alleged engaging in mass picketing; that no acts of fraud or violence are alleged in said indictment to have been committed by plaintiffs; that the defendants unless restrained will force the plaintiffs to stand trial for acts made lawful by the Clayton and Norris-LaGuardia Acts, thus depriving plaintiffs of rights specifically guaranteed to them and made lawful by said laws of the United States.

As and for a fourth separate and distinct cause of action, plaintiffs, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Torochi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, allege as follows:

I.

The plaintiffs bring and maintain this count to redress the deprivation, under color of territorial law of rights, privileges and immunities secured by the Constitution of the [14] United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States and of persons within the jurisdiction of the United States, pursuant to Section 41, subdivision (14) of Title 28 of the United States Code Annotated.

II.

That the plaintiffs are citizens of the United States entitled to the protection of rights guaranteed by the Constitution and the laws of the United States; that plaintiffs are residents of the Territory of Hawaii and within the jurisdiction of this Court; that plaintiffs are residents of the County of Kauai in said Territory, which county is in the jurisdiction of the fifth judicial circuit of said Territory; that plaintiffs are members of the International Longshoremen's and Warehousemen's Union (CIO) and of Local 149 of said International Longshoremen's and Warehousemen's Union; that said unions are trade unions engaged as such in the Territory of Hawaii, maintaining offices in Honolulu and on the Island of Kauai.

III.

That the defendant, Philip L. Rice, is the regularly appointed and acting judge of the circuit court of the fifth judicial circuit of the Territory of Hawaii.

IV.

That the defendant, C. Nils Tavares, if the regularly appointed and acting Attorney General of the Territory of Hawaii. [15]

V.

That the defendants herein have engaged in a course of conduct, hereinafter fully described, in violation of plaintiffs' right to engage in peaceful picketing, guaranteed by the right of free speech

and of the press and of peaceable assembly under the First Amendment of the Constitution and by the privileges and immunities and due process clauses of the Fourteenth Amendment and further protected under the Clayton Act and the Norris-LaGuardia Act; and defendants acting in contravention of these constitutional rights of plaintiffs and rights given by said laws of the United States have injured, oppressed and intimidated citizens of the United States, including the individual plaintiffs herein in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States; and that unless restrained defendants will continue in their unlawful conduct.

VI.

That on the 17th day of September, 1946, the Lihue Plantation Company, Limited, filed a Petition for Injunction and Order to Show Cause in said circuit court of the fifth judicial circuit, requesting the defendant to issue without hearing, a restraining order in a labor dispute; that the said petition is entitled "The Lihue Plantation Company, Limited, Petitioner v. International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu [16] Morimoto, Benjamin Iida, George Masaki, Charles

Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., respondents, being Equity No. 120 among the records of said court; that a copy thereof is attached hereto and marked Exhibit "A" and made a part hereof as though fully set forth herein.

VII.

That on the 17th day of September, 1946, the defendant Philip L. Rice issued a temporary restraining order ex parte at the request of said Lihue Plantation Company, Limited, in violation of plaintiffs' rights guaranteed by the Constitution and in contravention of said Clayton and Norris-LaGuardia Acts; that respondents named in said Lihue Plantation Company Petition thereafter entered an appearance and presented an oral motion to dissolve said Temporary Restraining Order on the ground it was issued without authority of law and in violation of constitutional rights and the Norris-LaGuardia Act; that the defendant Philip L. Rice refused to dissolve said Temporary Restraining Order, ignoring plaintiffs' constitutional rights and holding that the Norris-LaGuardia Act did not apply to the Territory and to circuit courts of the Territory; that thereafter on the 23rd day of September, 1946, the said defendant Philip L. Rice acting upon his own initiative modified the aforesaid temporary restraining order and issued an amended temporary restraining order; that a copy thereof is attached hereto and marked Exhibit "B" and made a part hereof as though fully set forth herein.

VIII.

That on the 29th day of October, 1946, the Grand Jury [17] of the fifth circuit court of the Territory of Hawaii returned an indictment against plaintiffs wherein it is alleged that plaintiffs unlawfully, feloniously and wilfully disobeyed said amended temporary restraining order; that a copy of said indictment is attached hereto and marked Exhibit "C" and made a part hereof as though fully set forth herein.

IX.

That during all times herein mentioned, a labor dispute existed between the respondents against whom said amended temporary restraining order was issued by the defendant Philip L. Rice and the petitioner therein, The Lihue Plantation Company, Limited; that said labor dispute related to the demands of said respondents for wages and general conditions of employment on behalf of the members of said respondent labor unions, including the plaintiffs herein, some of whom are employed by The Lihue Plantation Company, Limited, and others of whom are employed by other plantation companies on the Island of Kauai.

X.

That by virtue of rights guaranteed as aforesaid by the Constitution of the United States and by said laws of the United States the defendant Philip L. Rice was at all times herein mentioned without lawful authority or jurisdiction to issue said temporary restraining order or amended restraining order

denying plaintiffs the free exercise of their right to peacefully and in concert with others picket the premises of The Lihue Plantation Company, Limited, and of the homes of employees; that the amended temporary restraining order being wholly void, contempt proceedings cannot be predicated upon alleged violation of an unlawful order or upon the exerices of the right to picket in concert with others guaranteed by the constitution and laws of the United States.

XI.

That the defendant Philip L. Rice has set said criminal contempt proceedings on his calendar for plea on February 4, 1947, and has informed counsel for plaintiffs herein that he intends to proceed forthwith with the trial of plaintiffs herein for contempt of said void amended restraining order issued by him; that the defendant Philip L. Rice has already deprived the plaintiffs herein of rights guaranteed by the Constitution and said laws of the United States; that he has already violated said constitutional rights of plaintiffs and refused to comply with the provisions of said laws and has restrained lawful activity; that if the defendant Philip L. Rice is not restrained he will proceed to try plaintiffs for criminal contempt of said circuit court of the fifth judicial circuit for alleged violations of said void amended temporary restraining order and for engaging in peaceful picketing, a right guaranteed plaintiffs by the Constitution and specifically made lawful and not subject to criminal prosecutions by said laws of the United States.

XII.

That the said indictment charging defendants with criminal contempt is wholly predicated upon violation of the void amended restraining order issued by the defendant Philip L. Rice; that the said indictment charges plaintiffs with a crime for engaging in concert with others in peaceful picketing, a right guaranteed by the Constitution and specifically [19] made lawful by said laws of the United States.

XIII.

That the said defendant C. Nils Tavares as Attorney General will, unless restrained by this court, conduct the prosecution of plaintiffs on the 4th day of February, as aforesaid.

XIV.

That the said defendants by their actions and threats as aforesaid will, unless restrained by this court, and in utter and complete disregard of rights guaranteed by the Constitution and of provisions of the Clayton and Norris-LaGuardia Acts deprive plaintiffs of their rights secured by the Constiution and laws of the United States to be free from any legal restraints or prosecution for having engaged in concert with others in peaceful picketing during the course of a labor dispute.

XV.

That plaintiffs have no plain, adequate and speedy remedy at law.

Wherefore plaintiffs pray that the above entitled court make and enter the following orders, to wit:

1. Directing defendants to show cause on a day certain, why a preliminary injunction should not be granted restraining all further proceedings in that certain criminal indictment entitled "Territory of Hawaii v. Constancio R. Alesna, et al.," Criminal No. 896, pending in the circuit court of the fifth circuit, Territory of Hawaii, pending trial on the merits or from proceeding with any contempt proceedings in connection [20] with any alleged violation of the amended temporary restraining order issued in that certain action entitled "The Lihue Plantation Company, Limited v. International Longshoremen's and Warehousemen's Union (CIO) et al., Equity No. 120, pending in said court, pending trial on the merits herein.

2. That pending the hearing on the order to show cause a temporary restraining order issue against defendants.

3. That upon the trial on the merits a permanent injunction be granted against defendants.

4. For such other and further relief as the court deems proper in the premises.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs. [21]

Territory of Hawaii,

City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, on oath, deposes and says: that she is one of the attorneys for the plaintiffs in the foregoing complaint; that affiant makes this verification for and on behalf of said plaintiffs as none of said plaintiffs resides or is located in the City and County of Honolulu, where affiant maintains her office; that she has read said complaint, knows the contents thereof and that the statements therein contained are true of her own knowledge except as to matters therein stated upon information or belief, and as to those matters she believes it to be true.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 31st day of January, 1947.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii. [22]

EXHIBIT A

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

Eq. No.

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO),
LOCAL 149 OF THE INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSE-
MEN'S UNION (CIO), UNIT 1, LOCAL 149
OF THE INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION
(CIO), JOSEPH NUNES, DANIEL
RAPOZO, FERNANDO FONTANILLAS,
THOMAS TAKEMOTO, SUNAO IWA-
MOTO, WILLIAM PAIA, YOSHIKAZU
MORIMOTO, BENJAMIN IIDA, GEORGE
MASAKI, CHARLES MORITA, RONALD
TOYOFUKU, TAKU AKAMA, JOHN DOE,
MARY DOE, RICHARD DOE, et al.,

Respondents.

PETITION FOR INJUNCTION AND ORDER
TO SHOW CAUSE

To the Honorable Philip Rice, Judge of the Above
Entitled Court, Presiding at Chambers in
Equity:

Comes now, The Lihue Plantation Company, Limited, Petitioner herein, and respectfully alleges and shows as follows:

I.

That the Petitioner, The Lihue Plantation Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii with its main offices located in Honolulu, City and County of Honolulu, Territory of Hawaii;

II.

That the Respondent, International Longshoremen's and Warehousemen's Union (CIO), is an unincorporated labor union association, whose regional offices in the Territory of Hawaii are located at Pier 11, Queen Street, City and County of Honolulu, Territory, and whose main offices are located in San Francisco, California;

III.

That the Respondent Local 149 of the International Longshoremen's and Warehousemen's Union, is a local union of the above named Respondent International Longshoremen's and Warehousemen's Union, and is composed of units for each of the sugar plantations located in the Territory of Hawaii; that so far as the Petitioner has been able to ascertain, the offices of said Local 149 are located at Pier 11, South Queen Street, City and County of Honolulu, Territory of Hawaii;

IV.

That the Respondent Unit 1, Local 149, International Longshoremen's and Warehousemen's Union,

is an unincorporated association, and a unit of the Respondent Local 149 referred to in Paragraph III herein above; that said Unit is composed of certain employee members from among the employees of the Petitioner; and that the offices of said Unit are located at Kapaia, County of Kauai, Territory of Hawaii; [24]

V.

That upon information and belief of the Petitioner, the individuals named Respondents, Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, and Sunao Iwamoto are President, First Vice-President, Second Vice-President, Recording Secretary, and Financial Secretary, respectively, of the Respondent Union Local 149, Unit 1; that Respondent William Paia is the Island President of said Respondent Union Local 149; that Yoshikazu Morimoto is Business Agent of said Respondent Union Local 149 for the Island of Kauai; that the individual named Respondents Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama are each members of the above Respondent Unit 1, Local 149; that each of the above-named individual Respondents are residents of the Island of Kauai, Territory of Hawaii; that the individual unnamed Respondents are unknown and for that reason certain fictitious names are used; that said individual unnamed Respondents include members of the above-named Respondent Unit 1, Local 149, Respondent Local 149, and Respondent International Longshoremen's and Warehousemen's Union, their officers, agents and servants, and others acting in concert and participation with the Respondents;

VI.

That the Respondent International Longshoremen's and Warehousemen's Union, Local 149, did, on the first day of September, 1946, call out on strike the Petitioner's employees at the Petitioner's plantation located in the County of Kauai, Territory of Hawaii; that the Respondents, their agents, servants and employees, and others in active [25] concert and participation with them have congregated and still continue to congregate in mobs and as picketers at times in excess of two hundred (200) persons, near or upon plantation property in the immediate vicinity of the entrances to the mill, store, and other premises of the Petitioner in a disorderly and unlawful manner, and have wilfully and maliciously blocked and continue to block the entrance to the Petitioner's premises; that said Respondents, their agents, servants and employees and others in active concert and participation with them continue to congregate at all hours of the day and especially when Petitioner's supervisory personnel and other employees seek to enter upon the mill premises; that said Respondents, their agents, servants and employees and others in active concert and participation with them have indicated by their actions and otherwise their firm intention to deny and have denied to the Petitioner lawful entry upon its premises, and to deny entry to any other persons lawfully seeking to enter upon said premises, whether for the purposes of general maintenance and repair, proper protection and operation of utility equipment serving the community, preservation

of foodstuffs, or operations directed to the care of growing crops and the undertaking of customary operations in connection therewith; that said mobs and picketers are at times boisterous, and use offensive, disorderly, abusive and insulting language, directing it at the employees of the Petitioner; that the Respondents, their agents, servants and employees, and others in active concert and participation with them, have threatened and still continue to threaten Petitioner's employees with serious injury to their persons if they do not accede to Respondent's demands or if they attempt to proceed to work and to perform work; that said picketers and their activities as specified, have threatened to cause and have in fact caused numerous breaches of the peace; that the Respondents, their agents, servants and employees, and those in active concert and participation with them, unlawfully have picketed in numbers at times in excess of one hundred and fifty (150) persons, and are continuing to picket many of the homes of the Petitioner's employees; that the said Respondents, their agents, servants, and employees and those in active concert and participation with them have congregated in front and around of the said homes and have used offensive, abusive, disorderly and insulting language and have caused disturbances by undue noise and unseemly acts so as to annoy, disturb, and be offensive to others; that said Respondents, their agents, servants, and employees and those others in active concert and participation with them have used threatening and intimidating language towards the petitioner's

employees concerning the safety of their families, and by their congregating have frightened and intimidated the members of the families of the Petitioner's employees; that the Respondents, their agents, servants and employees and those in active concert and participation with them unlawfully have picketed many roads and streets throughout plantation property, stopping and intimidating any and all persons seeking ingress on such roads and streets; [27]

VII.

That by reason of the conduct of the Respondents set forth in Paragraph VI, said Respondents have obstructed the means of ingress and egress used by Petitioner's employees to and from said mill, store and other plantation premises and have intimidated Petitioner's employees desiring to enter or proceed in and from said premises;

VIII.

That by reason of the conduct of the Respondents set forth in Paragraph VI above, and by false and misleading statements to the employees of Petitioner, the Respondents have wilfully, unlawfully and maliciously prevented a number of persons from continuing in the active employ of Petitioner and from entering said plant to work or to seek employment with the Petitioner;

IX.

That by reason of the conduct of the Respondents and their agents, servants and employees and others in concert and participation with them, as set forth

in Paragraphs VI, VII, and VIII, Petitioner has been unable to repair or operate its mill, to irrigate its fields, properly maintain its utilities, protect its foodstuffs, or otherwise to perform even essential maintenance of equipment; that the unlawful acts set forth in this petition have been committed and that such acts will be continued, unless restrained; and that substantial and irreparable injury to the Petitioner's property will follow unless the requested relief is granted; [28]

X.

That, upon information and belief, the conduct of the Respondents, set forth in Paragraphs VI, VII, and VIII, above, will continue unless restrained;

XI.

That the Petitioner has no adequate remedy at law; Wherefore, Petitioner prays:

(1) That an order issue out of and under the seal of this Honorable Court as provided by law directed to the Respondents herein ordering them to appear ten days from the date of the filing of this petition and at a place to be designated by the Court and then and there to show cause, if any they have, why the injunction herein petitioned for should not be entered and issue; and

(2) That after a hearing hereon an order be entered herein restraining and enjoining the Respondents and each of them from in any way

(a) Interfering with the ingress and egress from the Petitioner's mill, store or other plantation buildings and premises located in the

County of Kauai, Territory of Hawaii, by the Petitioner, its employees, or any others who may enter said premises for the purpose of performing work or for other lawful occasion;

(b) Threatening violence or using coercion or intimidation by force of numbers or otherwise, or other unlawful means upon the employees of the Petitioner or those seeking employment with the Petitioner, or others lawfully entering upon the Petitioner's premises or proceeding to or from said premises; [29]

(c) Coercing or intimidating employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety and welfare of any of the Petitioner's employees families or those seeking employment with the Petitioner; or coercing or intimidating the families of the Petitioner's employees;

(d) Visiting the homes of the Petitioner's employees or persons seeking employment with the Petitioner or approaching, following or trailing any of said persons at any place whatsoever in an offensive, disorderly, threatening or intimidating manner, or in such a manner as to provide a breach of the peace;

(e) Picketing the homes of the Petitioner's employees or persons seeking employment with the Petitioner;

(f) Making, uttering or circulating any false, deceitful or untrue statements with reference to the Petitioner, its employment practices, and its employees working therein, or others seeking to work therein;

(g) Mass picketing or other congregating in crowds on or near the premises of the Petitioner;

(3) That the Court fix the proper number of pickets and restrain the Respondents from picketing the Petitioner's mill, offices, stores or other buildings or premises with more than the number so fixed by the Court, such pickets to wear badges reading "Authorized Picket"; [30]

(4) That the Court grant such other and further relief as the Petitioner may be entitled to in equity.

Dated: Lihue, Kauai, T. H. September 1946.

Territory of Hawaii,
County of Kauai—ss.

....., being first duly sworn, on oath deposes and says, That he is Manager of The Lihue Plantation Company, Limited, the Petitioner named herein; that he has read the foregoing petition, knows the contents thereof and that the allegations contained herein are true and correct, except the allegations made on information and belief and as to those he believes them to be true.

Subscribed and sworn to before me this day of, 1946. [31]

EXHIBIT C

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

January Term 1946

TERRITORY OF HAWAII

vs.

CONSTANCIO R. ALESNA, JOSE BAGOGO
BERNAL, DANIEL RODRIGUEZ FER-
REIRA, YUTAKA GOHARA, CORNEL
IHA, MASASHI KAGEYAMA, TOROICHI
KANDA, RALPH JOSEPH MENDES,
FRANK GONSALVES PERREIRA, NO-
BORU TAKEUCHI, FRED TANIGUCHI,
AND GENKICHI WADA,

Defendants.

CONTEMPT

(Violation of Sec. 11140, R.L.H. 1945.)

INDICTMENT

First Count:

The Grand Jury of the Fifth Circuit of the
Territory of Hawaii do present:

That at Lihue, County of Kauai, Territory of
Hawaii, and within the jurisdiction of this Honor-
able Court, on the 23rd day of September, 1946, a
certain lawful order, called an "Amended Tempo-
rary Restraining Order," was duly and lawfully
made, entered and issued by and in the name of the
Honorable Philip L. Rice, Circuit Judge, Fifth Cir-

cuit, Territory of Hawaii, in a cause entitled “Equity No. 120, In the Circuit Court of the Fifth Circuit, Territory of Hawaii, At Chambers, In Equity, The Lihue Plantation Company, Limited, Petitioner, vs. International Longshoremen’s [32] and Warehousemen’s Union (CIO), Local 149 of the International Longshoremen’s and Warehousemen’s Union (CIO), Unit 1, Local 149, of the International Longshoremen’s and Warehousemen’s Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sanao Iwamoto, William Paia, Yoshikaza Morimoto, Benjamin Iida, George Masaki, Charles Moritz, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Doe, et al., Respondents” (said parties being hereinafter referred to as petitioner and respondents, respectively), a true and correct copy of which lawful order is hereto attached, marked “Exhibit A,” and made a part hereof, which lawful order was directed, in the name of the Territory of Hawaii, to respondents and by which said lawful order respondents were restrained and enjoined from, among other things, in any way engaging in mass picketing by assembling in compact groups or congregating in crowds on or near real property of the petitioner, whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by said petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property, and by which said

lawful order respondents were further ordered to limit the number of pickets used by respondents to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the petitioner's property, said lawful order providing that any pickets in excess of three (3) at any point and station should be in motion and, except [33] when passing each other, should maintain a distance of not less than ten (10) feet between each other and that such picketing as might be done by such pickets should not be violative of the foregoing restrictive provision relating to mass picketing, and by which lawful order all pickets were thereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing the petitioner, its employees, or any other persons lawfully seeking to enter or leave the petitioner's premises and from otherwise committing the acts prohibited by the foregoing restrictive provision relating to mass picketing; that, pursuant to an order made and entered by said Court at Lihue aforesaid on said 23rd day of September, 1946, commanding the service of copies of said lawful order on each of said respondents, a certified copy of said lawful order was duly served on each of said respondents by handing and delivering to and leaving with each of them personally a certified copy thereof on said date in the Territory of Hawaii and within the jurisdiction of said Court.

That, notwithstanding said lawful order, Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Toroichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, at Hanamaulu, in the County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable [34] Court, on or about the 10th day of October, 1946, did unlawfully, feloniously and wilfully disobey said lawful order by then and there engaging in mass picketing with others, to the Grand Jurors unknown, by assembling with such others in compact groups and congregating in crowds on and near certain real property of the petitioner used for business purposes, to wit: the Hanamaulu Shop and the approaches thereto, to thereby prevent and attempt to prevent and physically obstruct and interfere with ingress to and egress from said real property by the petitioner, its employees, including Alfred G. Perreira, Eddie Medeiros, Manual Medeiros, William Farias, Manual Bugado and Ernest S. Carvalho III, and each of them, and other persons lawfully seeking to enter and leave said real property, the said Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Mahashi Kageyama, Totoichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, then and there having notice and

knowledge of said lawful order and at all times herein mentioned being members of said International Longshoremen's and Warehousemen's Union (CIO) and Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), respondents hereinabove mentioned, and so in manner and form aforesaid, they, the said [35] Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kagayama, Toroichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, did unlawfully, feloniously and wilfully disobey said lawful order and were then and there and thereby in contempt of court, contrary to the form of the statute in such case made and provided.

Second Count:

And the Grand Jury of the Fifth Circuit of the Territory of Hawaii do further say and present in order to charge a further violation of the lawful order hereinafter mentioned and arising out of the transactions hereinabove set forth in the First Count of this indictment:

That at Lihue, County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 23rd day of September, 1946, a certain lawful order, called an "Amended Temporary Restraining Order," was duly and lawfully made, entered and issued by and in the name of the Honorable Philip L. Rice, Circuit Judge, Fifth

Circuit, Territory of Hawaii, in a cause entitled “Equity No. 120, in the Circuit Court of the Fifth Circuit, Territory of Hawaii, At Chambers, In Equity, The Lihue Plantation Company, Limited, Petitioner, vs. International Longshoremen’s and Warehousemen’s Union (CIO), Local 149 of the International Longshoremen’s and Warehousemen’s Union (CIO), Unit 1, Local 149, of the International Longshoremen’s and Warehousemen’s Union (CIO), Joseph Nunes, Daniel [36] Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Doe, et al., Respondents” (said parties being hereinafter referred to as petitioner and respondents, respectively), a true and correct copy of which lawful order is hereto attached, marked “Exhibit A,” and made a part hereof, which lawful order was directed, in the name of the Territory of Hawaii, to respondents and by which said lawful order respondents were restrained and enjoined from, among other things, in any way engaging in mass picketing by assembling in compact groups or congregating in crowds on or near real property of the petitioner, whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by said petitioner, any of its employees, or any other persons lawfully seeking to enter or

leave any of said real property, and by which said lawful order respondents were further ordered to limit the number of pickets used by respondents to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the petitioner's property, said lawful order providing that any pickets in excess of three (3) at any point and station should be in motion and, except when passing each other, should maintain a distance of not less than ten (10) feet between each other and that such picketing as might be done by such pickets should not be violative of the foregoing restrictive provision relating to [37] mass picketing, and by which lawful order all pickets were thereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing the petitioner, its employees, or any other persons lawfully seeking to enter or leave the petitioner's premises and from otherwise committing the acts prohibited by the foregoing restrictive provision relating to mass picketing; that, pursuant to an order made and entered by said Court at Lihue aforesaid on said 23rd day of September, 1946, commanding the service of copies of said lawful order on each of said respondents, a certified copy of said lawful order was duly served on each of said respondents by handing and delivering to and leaving with each of them personally a certified copy thereof on said date in the Territory of Hawaii and within the jurisdiction of said Court.

That, notwithstanding said lawful order, Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Nasashi Kageyama, Toroichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, at Hanamaulu, in the County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 10th day of October, 1946, did unlawfully, feloniously and wilfully disobey said lawful order by then and there engaging in picketing with others, to the Grand Jurors unknown, in groups of more than three (3) pickets at points of ingress to and egress from the petitioner's property to wit: the Hanamaulu Shop and approaches thereto, said pickets then and there not being in motion and not maintaining a distance of ten (10) feet between each other, the said Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Nasashi Kageyama, Toroichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, then and there having notice and knowledge of said lawful order and at all times herein mentioned being members of said International Longshoremen's and Warehousemen's Union (CIO), and Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), respondents hereinabove mentioned, and

so in manner and form aforesaid, they, the said Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Toroichi Kanda, Ralph Joseph Mendes, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, and each of them, did unlawfully, feloniously and wilfully disobey said lawful order and were then and there and thereby in contempt of court, contrary to the form of the statute in such case made and provided.

A true bill found this 29th day of October, 1946.

/s/ WM. G. WEBER,

Foreman of the Grand Jury.

/s/ DUDLEY C. LEWIS,

Deputy Attorney General of
the Territory of Hawaii.

EXHIBIT B

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), LO-
CAL 149 of the INTERNATIONAL LONG-
SHOREMEN'S AND WAREHOUSEMEN'S
UNION (CIO), Unit 1, Local 149, of the IN-
TERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO),
JOSEPH NUNES, DANIEL RAPOZO, FER-
NANDO FONTANILLA, THOMAS TAKE-
MOTO, SUNAO IWAMOTO, WILLIAM
PAIA, YOSHIKAZU MORIMOTO, BENJA-
MIN IIDA, GEORGE MASAKI, CHARLES
MORITA, RONALD TOYOFUKU, TAKU
AKAMA, JOHN DOE, MARY DOE, RICH-
ARD ROE, et al.,

Respondents.

AMENDED TEMPORARY RESTRAINING
ORDER

Territory of Hawaii to the International Long-
shoremen's and Warehousemen's Union (CIO),
Local 149 of the International Longshoremen's

and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., Greetings:

Whereas, the Lihue Plantation Company, Limited, has filed herein a petition against you praying to be relieved touching the matters therein set forth; and

Whereas, an order to show cause issued from and under the seal of this Court ordering you to appear before the undersigned, Judge of the above entitled Court, on Friday, the 27th day of September, 1946, at the hour of 9 o'clock a.m., and [40]

Whereas, a Motion for Temporary Restraining Order was also filed and, by supporting affidavits and evidence adduced by the Petitioner at the time of the filing of the petition in the above entitled proceeding, it appeared that the acts therein specified and complained of will continue unless restrained pending a hearing on the petition in the above entitled proceedings; and

Whereas, pursuant to the prayer of said petition and the said motion, a Temporary Restraining Order was issued on the 17th day of September, 1946, and subsequently the Respondents, by Richard Gladstein, acting in their behalf and as their attorney, entered an appearance and presented an oral

motion to dissolve and vacate said Temporary Restraining Order, and a hearing thereon was had before the Court, to wit, the undersigned, the Circuit Judge of the Fifth Circuit, Territory of Hawaii, At Chambers, In Equity, Petitioners being represented thereat by Attorneys Montgomery E. Winn and E. C. Moore, of Vitousek, Pratt, and Winn and Dudley C. Lewis, Esq., Deputy Attorney General of the Territory of Hawaii, appearing at the request of the Court and as *amicus curiae*, and the Court, after hearing and considering argument on said motion having over-ruled the same and having given notice to the parties to appear at, and continued proceedings until the 23d day of September, 1946, so that the parties might then be advised if the Court should then, upon its own initiative, modify, the aforesaid Temporary Restraining Order;

Now Therefore, after consideration and deliberation, the Court does, on this 23d day of September, 1946, modify the aforesaid Temporary Restraining Order and

It Is Ordered that said Temporary Restraining Order be, and it hereby is modified to the extent hereof and by substitution therefor of this Amended Temporary Restraining Order: [41]

Wherefore, you, International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwa-

moto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., are hereby restrained and enjoined until the further order of this Court from in any way

(1) Obstructing or attempting to obstruct, by massing of pickets or otherwise, the ingress to or egress from the Petitioner's mill, store or other plantation buildings or premises located in the County of Kauai, Territory of Hawaii, of the Petitioner, its employees, or any others who may enter or desire to enter said premises for the purpose of performing work or for other lawful occasion;

(2) Obstructing or attempting to obstruct, by massing of pickets or otherwise, freedom of movement on or along the public or private roads or ways in or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may pass or desire to pass on or along said roads or ways for the purpose of performing work or for other lawful occasion;

(3) Obstructing or attempting to obstruct the free movement in, on or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may be in, on or about said premises for the purpose of performing work or for other lawful occasion;

(4) Threatening violence to, intimidating, or coercing, or attempting to intimidate or

coerce, the employees of the Petitioner or those seeking employment with the Petitioner, or any persons who are lawfully upon the Petitioner's premises or [42] are proceeding to or from said premises;

(5) Coercing or intimidating, or attempting to coerce or intimidate, employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety or welfare of the families of such employees or the families of those seeking employment with the Petitioner; or threatening violence to, or coercing or intimidating, or attempting to coerce or intimidate, such families;

(6) Without express written consent of the occupants thereof, visiting or being at or about the dwelling houses or residence premises belonging to Petitioner and occupied by employees of or persons seeking employment with Petitioner and thereat being offensive, disorderly, threatening or intimidating (in words or actions) towards, and harassing, such occupants, or any of them;

(7) Mass picketing by assembling in compact groups or congregating in crowds on or near real property of the Petitioner, whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by Petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property;

And In Furtherance Hereof, you are hereby ordered to limit the number of pickets which you shall use to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the Petitioner's property, provided, however, that any pickets in excess of three (3) at any one point and station, shall be in motion and, except when passing each other, shall maintain a distance of not less than ten (10) feet between each other and such picketing as shall be done by them shall not be violative of any of the preceding restrictive [43] provisions hereof; all pickets being hereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing /s/ PLR
~~interfering with~~ the petitioner, its employees, or any other persons lawfully seeking to enter or leave the Petitioner's premises; and all pickets being also enjoined from otherwise committing any of the acts hereinbefore prohibited. Any persons engaged in such picketing as is not hereby restricted or prohibited shall wear arm bands reading "Authorized Picket," or "U P."

Dated: Lihue, Kauai, T. H., September 23, 1946.

[Seal] /s/ PHILIP L. RICE,

Circuit Judge, Fifth Circuit,
Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ SAMUEL H. KIMURA,
File Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii.

[Endorsed]: Filed Jan. 31, 1947. [44]

District Court of the United States
for the District of Hawaii

Civil Action File No. 769

CONSTANCIO R. ALESNA, JOSE BAGOGO
BERNAL, DANIEL RODRIGUES FER-
REIRA, YUTAKA GOHARA, CORNEL
IHA, MASAHI KAGEYAMA, TOROICHI
KANDA, RALPH JOSEPH MENDES,
FRANK GONSALVES PERREIRA, NO-
BORU TAKEUCHI, FRED TANIGUCHI,
and GENKICHI WADA,

Plaintiff,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
for the Fifth Judicial Circuit of the Territory
of Hawaii; and C. NILS TAVARES, as Attor-
ney General of the Territory of Hawaii,

Defendant.

SUMMONS IN A CIVIL ACTION

To the above named Defendant:

You are hereby summoned and required to serve
upon Harriet Bouslog, and Myer C. Symonds, plain-
tiff's attorneys, whose address is Room 206, Pier 11,
Honolulu (16), T. H., an answer to the complaint
which is herewith served upon you, within 20 days
after service of this summons upon you, exclusive of

the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Dated January 31, 1947. [45]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 1st day of February, 1947, I received the within summons and the same is returned duly executed as follows: On February 1, 1947, personal service was made on C. Nils Tavares, Attorney General of Territory of Hawaii, at Iolani Palace, by exhibiting the original Summons to him and by handing to and leaving with him a certified copy of said Summons.

On February 3, 1947, personal service was made on Philip L. Rice, Judge of the Circuit Court of the Fifth Judicial Circuit, Territory of Hawaii, at Iolani Palace by exhibiting the Original Summons to him and by handing to and leaving with him a certified copy of said Summons.

/s/ OTTO F. HEINE,
United States Marshal.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER

Upon the reading, filing and consideration of the verified complaint herein praying for an order directed to the defendants above named, to appear before the above entitled court on a day certain and show cause why a preliminary injunction should not be granted herein, enjoining and restraining said defendants from taking any further proceedings in connection with that certain indictment for Contempt pending in the circuit court of the fifth circuit, Territory of Hawaii, entitled "Territory of Hawaii v. Constancio Alesna, et al.," being Criminal No. 896 among the records of said court, or from proceeding with any contempt proceedings in connection with any alleged violation of the amended temporary restraining order issued in that certain action entitled [47] "The Lihue Plantation Company, Limited, v. International Longshoremen's and Warehousemen's Union (CIO), et al.," Equity No. 120 among the records of said court, and further praying that pending the hearing of the said Order to Show Cause a Temporary Restraining Order be issued herein, and

It appearing to the court from said complaint that if a temporary restraining order is not granted without notice, the plaintiffs herein will be required to appear on February 4, 1947, to defend themselves against the charge of criminal contempt of the said circuit court of the fifth judicial circuit for alleged violations of said Amended Temporary Restraining

Order, In Equity No. 120, by the defendant Philip L. Rice as Judge thereof, thereby depriving plaintiffs of alleged rights under the Constitution and laws of the United States before this court can determine on the merits the rights of plaintiffs to a decree of this court enjoining further proceedings in contempt, thereby causing irreparable injury to the plaintiffs, and the court being fully advised in the premises and it being a proper case for this order.

It Is Hereby Ordered that Philip L. Rice, as Judge of the circuit court for the fifth judicial circuit of the Territory of Hawaii; and C. Nils Tavares, as Attorney General of the Territory of Hawaii, defendants above named, be and they are hereby ordered to appear before the undersigned United States District Judge at his courtroom, Federal Building, Honolulu, T. H., on the 10th day of February, 1947, at the hour of 10 a.m. to show cause, if any they have, why the preliminary injunction prayed for in said petition should not be granted.

It Is Further Ordered that pending the hearing of said Order to Show Cause that said defendant, C. Nils Tavares as [48] Attorney General, his deputies, agents and representatives be, and they are hereby restrained and enjoined until the further order of this court from prosecuting or taking any further proceedings in that certain Indictment for Contempt pending in the circuit court of the fifth circuit, Territory of Hawaii, entitled "Territory of Hawaii v. Constancio Alesna, et al.," and being Criminal No. 896 among the records of said court, or from prosecuting or proceeding with any contempt proceedings in connection with any alleged

violation of the amended temporary restraining order issued in that certain action entitled "The Lihue Plantation Company, Limited, v. International Longshoremen's and Warehousemen's Union (CIO), et al.," Equity No. 120 among the records of said court.

It Is Further Ordered that a copy of this order together with a copy of the complaint and summons be served upon the defendants at least 6 days prior to the 10th day of February, 1947.

Dated: January 31st, 1947, at 2:43 p.m. at Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN,
United States District Judge.

UNITED STATES MARSHAL'S RETURN

Received the within Order to Show Cause and Temporary Restraining Order this 1st day of February, 1947, and the same is returned duly executed this 1st day of February, 1947, by personally exhibiting the Original Writ to Philip L. Rice, as Judge of the Circuit Court, for the Fifth Judicial Circuit of the Territory of Hawaii, and to C. Nils Tavares, Attorney General of the Territory of Hawaii, and by handing to and leaving with each of them a certified copy of the original Order to Show Cause and Temporary Restraining Order.

OTTO F. HEINE,
U. S. Marshal.

By /s/ GEORGE E. BRUNS,
Deputy. [50]

[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS TO ALLOW- ANCE OF PRELIMINARY INJUNCTION

Come now defendants Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit, Territory of Hawaii, and C. Nils Tavares, Attorney General of the Territory of Hawaii, and present the following objections to the allowance of a preliminary injunction in the above entitled matter:

I.

This Court has no jurisdiction to issue an injunction against the judge of a circuit court of the Territory of Hawaii.

II.

The judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain the prosecution of a proceeding pending before such circuit court.

III.

It affirmatively appears on the face of the complaint [52] filed herein that this Court has no jurisdiction to grant the relief prayed for therein, for the reason that this Court is without jurisdiction in equity to enjoin proceedings pending in a circuit court of the Territory of Hawaii to enforce the criminal laws of the Territory.

IV.

Said complaint fails to state a claim for equitable relief in that it fails to show that such relief is necessary to prevent irreparable injury to the plaintiffs, or any other ground for equitable relief.

Dated at Honolulu, T. H., this 8th day of February, 1947.

PHILIP L. RICE,

Judge of the Circuit Court for the Fifth Judicial
Circuit of the Territory of Hawaii, and

C. NILS TAVARES,

Attorney General of the Territory of Hawaii,
Defendants.

By /s/ MICHIO WATANABE,

Deputy Attorney General,
Their Attorney.

Service of a copy of the within objections this
day admitted.

Dated: Honolulu, Feb. 8, 1947.

/s/ HARRIET BOUSLOG,

/s/ MEYER C. SYMONDS,

Attorneys for Plaintiffs.

[Endorsed]: Filed Feb. 10, 1947.

In the United States District Court for the
Territory of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
for the Fifth Judicial Circuit of the Territory
of Hawaii; and C. NILS TAVARES, as Attor-
ney General of the Territory of Hawaii,
Defendants.

Before: Hon. J. Frank McLaughlin,
Judge.

RULING UPON MOTION FOR A PRELIMINARY INJUNCTION

Appearances:

Harriet Bouslog, Meyer C. Symonds, Attorneys
for Plaintiffs.

C. Nils Tavares, Attorney General, and Michiro
Watanabe, Deputy Attorney General, Attorneys for
Defendants.

The Plaintiffs bring this action under the Civil
Rights Act, 28 U.S.C., Section 41(14), alleging upon
four different grounds the deprivation under color
of Territorial law of rights guaranteed to them by
the Constitution and laws of the United States.

Upon application and in accord with 28 U.S.C.,
Section 381, Rule 65, Federal Rules of Civil Pro-

cedure, a Restraining Order was issued *ex parte*. An Order to Show Cause was returnable upon the tenth day thereafter, and as the argument was not concluded the Restraining Order was extended under the Rule an additional ten days.

The question—and the only question now before the Court—is whether or not, pending a hearing upon the merits, a Temporary Injunction should issue.

The case arises out of the recent Territorial-wide strike of all sugar plantation workers. Upon the Island of Kauai the Lihue Plantation Company, Limited, applied in a proceeding in equity to the Judge of the Territorial Circuit Court for the Fifth Judicial Circuit for injunctive relief against certain aspects of picketing then being carried on by the unionized strikers. The Territorial Judge issued *ex parte* a Restraining Order restricting certain phases of picketing by the defendants in that case. Thereafter the defendants moved to dissolve it as having been issued contrary to the provisions of the Norris-La Guardia Act. Judge Rice denied [55] the motion but subsequently upon his own motion amended the Restraining Order which he had previously issued. Insofar as is here pertinent, the Restraining Order as amended prohibited the defendants from

(a) Engaging in mass picketing on or near company business or residence property for the purpose of preventing, obstructing or interfering with ingress or egress to such property; and

(b) Using more than three (3) pickets at points of ingress to or egress from company property, and directing that at all other points where more than three (3) pickets were used that such pickets should be in motion and, except when passing each other, a distance of ten (10) feet between each picket should be maintained.

The Plaintiffs here were indicted upon two counts by the Grand Jury of the Territorial Fifth Circuit Court for criminal contempt of court in that, as alleged in the indictment, they wilfully violated the **Restraining Order**

(1) By mass picketing with others on or near company property to prevent, obstruct, and interfere with ingress and egress thereto; and

(2) By picketing with others in groups in excess of three at points of ingress to and egress from company property, and also by failing to keep in motion and by failing to maintain a distance of ten (10) feet between each other.

Thereafter, in a case in the Second Circuit Court arising [56] out of a similar situation upon the Island of Maui, upon a Petition for a Writ of Prohibition, the Territorial Supreme Court was called upon to decide whether or not the Norris-La Guardia Act applied to the Territorial Circuit Courts. In a decision dated December 4, 1946, the Supreme Court of Hawaii held that that Act did not apply to the Territorial Courts. (37 Hawaii 404) A Petition for Rehearing was denied by that Court

on January 23, 1947 (37 Hawaii), and an appeal has been taken to the Circuit Court of Appeals for the Ninth Circuit.

The Plaintiffs came to this Court January 31, 1947, and upon the basis of the allegations contained in the complaint—which included an allegation that the criminal case against Plaintiffs was set for plea and trial in the Fifth Circuit Court on February 4, 1947 (now reset for February 26th)—asked, *ex parte*, for an order restraining Judge Rice and the Territorial Attorney General from proceeding with the criminal case in the Fifth Circuit Court until further order of this Court.

Because of the nature of the case, the importance of the questions of law involved, and the facts and circumstances surrounding it, as has been stated, a Restraining Order issued, but only against the Territorial Attorney General, his deputies and assistants. The Defendant Judge and Attorney General were directed to show cause why a Preliminary Injunction should not issue as prayed for.

In reply, the Defendants state that

(1) This Court has no jurisdiction to enjoin Territorial Judge Rice;

(2) The Judge is not a proper party to a suit such as this;

(3) The complaint shows that this Court has no jurisdiction, for this Court cannot enjoin a criminal action pending in a Territorial Court; and

(4) That the complaint shows no grounds for equitable relief.

Plaintiffs, of course, state that Defendants' objections are not well taken, and affirmatively assert rights guaranteed to them by the Constitution and laws of the United States are being denied them by the Territory and one of its Courts in that

(a) The Norris-La Guardia Act does apply to the Territorial Courts,—hence, Judge Rice's amended Restraining Order was void—the Plaintiffs have been indicted for violating a void order of Court, and are being forced to defend themselves against such an indictment in a Court which has already ruled out the Norris-La Guardia Act and the hands of which on the point are now tied, in any event, by the ruling of the Territorial Supreme Court;

(b) If the Norris-La Guardia Act does not apply to the Territorial Courts, the same consequences above outlined follow [58] in any event, for it must then be that this Court, the United States District Court for the Territory of Hawaii, has been given by Congress exclusive power in the Territory to issue injunctions in labor dispute cases in conformity with the Norris-La Guardia Act and hence Judge Rice's Restraining Order was void;

(c) The laws of the United States grant Plaintiffs, members of a union, substantive rights which no Court can restrain in the absence of fraud or violence; that Judge Rice's Restraining Order is void, for it prohibited the free exercise of, and the indictment based thereon alleges it to have been a criminal

offense to have exercised, rights granted to members of a union by United States laws. In brief, it is said Plaintiffs are being charged criminally for doing what Congress gave them as members of a union a right to do.

And finally that

(d) Judge Rice's Order and the indictment based upon it deprived Plaintiffs of rights guaranteed to them by the Constitution in that the right to picket is an exercise of the rights of free speech and of assembly.

OPINION

My answers to the questions presented are:

I.

The Norris-La Guardia Act does not apply—directly—to the Territorial Judiciary. [59]

Although those courts fall squarely within the phrase "Court of the United States" as defined in the Act (29 U. S. Code, Section 113(d)), it is to me satisfactorily clear from the nature of the Territorial Government created by the Organic Act (48 U.S.C., Section 491) and the objective sought to be attained by Congress in passing the Norris-La Guardia Act that it was never meant to apply to the Territorial Courts.

In organizing this Territory, Congress gave to the local government which it created broad domestic powers, and it separated that local government from the operations within the Territory of the Fed-

eral Government. Congress gave to the Territory a form of organization more like that of a State than it had previously given to any like area. (See *Puerto Rico vs. Shell Co.*, 302 U. S., 253.) Insofar as the Territorial Courts are concerned, Congress itself recognized the distinction between the Territorial Courts and the U. S. District Court for the Territory of Hawaii (48 U.S.C., Section 645). As pointed out in *Wilder's Steamship Company vs. Hind*, 108 Federal, 113, at 115-116, years ago

“The system of courts created by the act for the Territory of Hawaii differs radically from the system of courts which Congress had theretofore created for any of the territories. In no other territory has there been a division of jurisdiction between cases which properly belong to the courts of the United States and other cases. Congress found in the Republic of [60] Hawaii a system of courts already established, whose jurisdiction was complete, and from the highest tribunal of which there was no appeal. To that system Congress, by the act, added a district court, conferring upon it the jurisdiction which pertains to the district and circuit courts of the United States, and providing for removing to that court from the Territorial courts causes which under the removal acts were removable from a state court to a court of the United States.” (See also *Yeung vs. Territory of Hawaii*, 132 Federal 2nd, 374.)

There is no intent revealed in either the act or its history which requires that the distinction between the Territorial courts and the Federal Court for the Territory of Hawaii was to be obliterated. Congress on the contrary spoke of an intent not to disturb domestic jurisdiction.

Further, as designed the Norris-LaGuardia Act does not fit the Territorial court system. 29 U.S.C., Section 110, provides for appeals from the granting or denial of a preliminary injunction to the Circuit Court of Appeals, which in this instance would be the Ninth Circuit Court of Appeals. Such an appeal from the Territorial Circuit Courts is not possible. From those courts appeals lie to the Territorial Supreme Court.

Basically, although "courts of the United States" in a very wide, general sense, the Territorial courts are not within the Norris-LaGuardia Act because Congress was aiming [61] at, and only at, the District Courts of the United States and the Circuit Courts of Appeal. A reading of the legislative history leaves no doubt upon the point. The evil sought to be remedied was the issuance of blanket injunctions against labor for little if any reason by the Federal Courts in labor dispute cases in contravention of the will of Congress as set forth in the Clayton Act. (29 U.S.C., Section 52. See *U. S. v. Hutcheson*, 312 U. S. 219.) In curing the evil by the passage of the Norris-LaGuardia Act Congress had no other courts in mind. It saw the source of the trouble and set about to remedy it, as it did, by curtailing the powers of the Federal judiciary—and none other.

II.

The Norris-LaGuardia Act does not apply to this Court.

The Act curtails and restricts the equity powers of the Federal Court to the same extent that it affects like powers held by Constitutional Federal Courts. In passing this legislation Congress gave not a moment's thought, to be sure, to Legislative Federal Courts as such. As to courts, the discussions were generally in terms of "inferior" courts, "inferior" Federal courts and "Federal" courts. But, nevertheless, the thing of importance to note was that Congress was dealing with equity power possessed by any Federal Court. This Court, although legislative, not only comes within the terms of 29 U.S.C., Section 113(d), but additionally is within the target [62] area reached by the Congress through the Norris-LaGuardia Act, for it has equity powers identical to those held by Constitutional Federal Courts. (48 U.S.C., Section 642.)

To arrive at any other conclusion than that the Act applies directly and squarely to this Court would not only be to construe the Act in a "spirit of mutilating narrowness" (see *U. S. vs. Hutcheson*, *supra*) while fully aware of what Congress was "driving at," but would further bring about the absurd result that this Legislative U. S. District Court has more power today than a Constitutional U. S. District Court.

III.

This Court has not been given exclusive jurisdiction to issue, upon compliance with the Norris-LaGuardia Act, injunctions in labor disputes.

The opposing contention is based upon the Sherman Act, 15 U.S.C., Section 3, giving this Court jurisdiction over violations of that law in Hawaii. Relying upon the *Hutcheson* case, *supra*, to the effect that the Sherman Act, the Clayton Act and this Act, the Norris-LaGuardia Act, must be read together as one integrated piece of legislation, it is argued that the amendatory act must be accorded the same geographical scope.

It is a fascinating and in many respects plausible argument, and under the *Hutcheson* case it is difficult to put a finger upon just why the second proposition does not follow from the [63] first. But I am not satisfied that the argument is sound.

Of all injunctions sought upon the theory that the complained of labor activity is an unlawful restraint upon Territorial commerce, this Court would have exclusive jurisdiction. But to hold, as plaintiffs urge, in the absence of specific language in the statute that the Territorial Courts are powerless to act by injunction in a case arising out of a labor dispute would be in my opinion judicial legislation.

Professing no intention to interfere with the equitable powers of the state courts—which of course it couldn't affect directly—it seems to me also reasonable to believe, in the absence of contrary language, that Congress had no reason, desire, or intention to deprive, as it could have, the domestic courts of Hawaii of any part or all of their equity power.

IV.

However, in this case, and with reference to the facts alleged and the law involved in the plaintiffs' third and fourth causes of action, a preliminary injunction should and therefore will issue.

How can it issue? There is a criminal proceeding pending in a Territorial Court, and 28 U.S.C., Section 379—which because of 48 U.S.C., Section 645 applies to this Court—says that no court of the United States shall enjoin proceedings in State or Territorial Courts. The answer is that the statute directing the observance of the principles of comity between [64] courts exercising different powers in the same area is not jurisdictional, and has recognized exceptions. (*Toucey vs. New York Life Insurance Co.*, 314 U. S. 118.)

Where exceptional circumstances of peculiar urgency are shown to exist, a Federal court may interfere with a State court or Territorial court for the purpose of inquiring whether or not a person is being held in violation of the Constitution and laws of the United States. (*Ex parte Royall*, 117 U.S. 241; *United States, Ex Rel. Kennedy, et al., vs. Tyler, Sheriff, et al.*, 269 U.S. 13; *United States Ex Rel, Murphy vs. Mruphy*, 108 Fed. 2nd 861; *United States Ex Rel. Buchalter vs. Lowenthal*, 108 Fed 2nd 863.) This power is exercisable by injunction as well as by writ. It is well settled that equitable jurisdiction exists to restrain criminal prosecutions under un-Constitutional enactments when the prevention of such prosecutions is essential to safeguard property rights. (See *Pughe vs.*

Patton, 21 Fed. Sup. 183, and cases there collected.) As pointed out recently by the Supreme Court of Massachusetts in a somewhat similar case, if equity can protect the right to sell bananas, there is no reason historical or otherwise why it cannot act to protect personal rights and rights guaranteed by the Constitution. (See *Kanyon vs. City of Chicopee*, Dec. 9, 1946, 15 Law Week, 2366.) And so, I am satisfied of the existence of the power to grant both the temporary and ultimate remedy asked for.

Now, should—or more pointedly—why should a preliminary injunction issue? Because in the absence of any Territorial law, and in the light of the definite Federal laws relating to permissible labor conduct—which laws the Territorial courts, too, must respect—there seems here to be a substantial question as to whether or not that which under Federal law may be allowable conduct can—by restrictions placed thereon by a court, however reasonable they might be—become, as the Supreme Court says, “the road to prison.” (See *U.S. vs. Hutcheson*, 312 U.S. 219; *Thornhill vs. Alabama*, 310 U.S. 88; *Hague vs. CIO*, 307 U.S. 507.)

In brief, with no questions of Territorial law involved at all, it looks as if Plaintiffs are in jeopardy because they did things which Federal law allowed. Before exposing Plaintiffs to the risks of trial for criminal contempt of court, I believe the questions of law posed under these facts should be further examined.

But I see no good reason why the preliminary injunction which will issue should enjoin the Judge

of the Fifth Circuit Court. Effective relief can be attained by restraining the hand of the Attorney General as effective relief *ex parte* was similarly granted at the time of the issuance of the Restraining Order. And, therefore, the Preliminary Injunction will be like the Restraining Order issued only to the Attorney General. A Preliminary Injunction in substantially the same form as the Restraining Order will suffice, and such will be signed on presentation.

[Endorsed]: Filed Feb. 25, 1947.

In the United States District Court for the
District of Hawaii

Civil Number 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
for the Fifth Judicial Circuit of the Territory
of Hawaii, et al.,

Defendants.

PRELIMINARY INJUNCTION

An order to show cause having been issued herein on the 31st day of January, 1947, directed to Philip L. Rice, as Judge of the Circuit Court for the Fifth Judicial Circuit of the Territory of Hawaii, and C. Nils Tavares, as Attorney General of the Territory

of Hawaii, defendants above named, ordering them to appear before the undersigned, Judge of the United States District Court for the Territory of Hawaii, on February 10, 1947, at 10:00 a.m. to show cause why a preliminary injunction enjoining them from taking any further proceedings in connection with that certain Indictment for contempt pending in the circuit court of the fifth circuit, Territory of Hawaii, entitled "Territory of Hawaii vs. Constancio R. Alesna, et al.," being Criminal No. 896 among the records of said court, or from proceeding with any contempt proceedings in connection with any alleged violation of the amended temporary restraining order issued in that certain action entitled "The Lihue Plantation Company, Limited, vs. International Longshoremen's and Warehousemen's Union (CIO), et al.," Equity No. 120 among the records of said court; and a Temporary Restraining Order having been issued against the defendant, C. Nils Tavares as Attorney General, his deputies, agents and representatives; and the said Philip L. Rice and C. Nils Tavares having filed "Defendants' Objections to Allowance of Preliminary Injunction"; and the matter having come on regularly to be heard on the 10th day of February, 1947; and the plaintiffs appearing by their attorneys, Harriet Bouslog and Myer C. Symonds, and the defendants appearing in person and by Michiro Watanabe, Deputy Attorney General, Their Attorney; and the matter having been orally argued on said February 10, 1947 and on February 11, 1947, and the matter having been on said February 11, 1947, submitted

for decision and the said restraining order having been extended by order of court to February 20, 1947.

The court finds that if a preliminary injunction is not granted the plaintiffs will suffer irreparable injury and for the reasons stated in the Opinion of this Court dated this day and filed herein, and the court being fully advised in the premises and it being a proper case for this order,

It is hereby ordered that the defendant, C. Nils Tavares as Attorney General, his deputies, agents and representatives be, and they are hereby restrained and enjoined until the further order of this court from prosecuting or taking any further proceedings in that certain Indictment for Contempt pending in the circuit court of the fifth circuit, Territory of Hawaii, entitled "Territory of Hawaii vs. Constancio R. Alesna, et al.," and being Criminal No. 896 among the records of said court, or from prosecuting or proceeding with any [69] contempt proceedings in connection with any alleged violation of the amended temporary restraining order issued in that certain action entitled "The Lihue Plantation Company, Limited vs. International Longshoremen's and Warehousemen's Union (CIO), et al.," Equity No. 120 among the records of said court.

Dated: February 20, 1947, at 1:52 p.m., at Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN,
United States District Judge.

UNITED STATES MARSHAL'S RETURN

The within Preliminary Injunction was received by me on the 21st day of February, A.D. 1947, and the same is returned duly executed this 21st day of February, A.D. 1947, by personally handing to and leaving with C. Nils Tavares, as Attorney General of the Territory of Hawaii, at Honolulu, T. H. a certified copy of the within Preliminary Injunction.

Dated at Honolulu, T. H. this 21st day of February, A.D. 1947.

OTTO F. HEINE,

U. S. Marshal, District of
Hawaii.

By /s/ EMMANUEL U. MOSES, JR.,
Deputy. [71]

In the United States District Court for the
District of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
of the Fifth Judicial Circuit of the Territory
of Hawaii; and C. NILS TAVARES, as Attor-
ney General of the Territory of Hawaii,

Defendants.

ANSWER TO COMPLAINT

Philip L. Rice, Judge of the Circuit Court of the
Fifth Circuit of the Territory of Hawaii, for an-

swer to the complaint herein, asserts the following defenses in law and fact, to wit:

Answer to the Averments of the Complaint

Answering paragraphs numbered I to XVII, inclusive, of the first cause of action alleged in said complaint: .

I.

Defendant denies each and every allegation contained in paragraph I thereof.

II.

Defendant admits the allegations in paragraphs II and III thereof. [73]

III.

Answering paragraph IV thereof, defendant admits that C. Nils Tavares was the regularly appointed and acting Attorney General of the Territory of Hawaii on the date of said complaint, but alleges that said C. Nils Tavares is no longer Attorney General.

IV.

Defendant denies each and every allegation in paragraph V thereof.

V.

Defendant admits the allegations in paragraph VI thereof, except that defendant alleges that the petition prayed for an order to show cause why an injunction should not issue, and a motion was filed praying for a temporary restraining order, as more fully appears in Exhibit A hereto annexed.

VI.

Defendant admits the allegations in paragraph VII thereof, except that defendant denies that the issuance of the temporary restraining order mentioned in said paragraph was in contravention of the Clayton and Norris-La Guardia Acts mentioned in said paragraph, the Constitution of the United States, or any other law and except that defendant alleges that his holding with respect to the Norris-La Guardia Act related only to the application thereof to the circuit courts and circuit judges of the Territory. [74]

VII.

Defendant admits the allegations in paragraphs VIII and IX thereof.

VIII.

Answering the allegations in paragraph X, defendant denies that the Circuit Court of the Fifth Circuit of the Territory of Hawaii is a court of the United States as defined in said Norris-La Guardia Act; and, admitting that under the terms of said Act no court of the United States has jurisdiction to issue a restraining order or temporary or permanent injunction in a labor dispute without strictly complying with the terms and conditions of said Act and that no such court may under said Act restrain certain activities designated by said Act, defendant alleges that such provisions do not apply to the circuit courts of the Territory of Hawaii or the circuit judges presiding at chambers in equity in said Territory.

IX.

Defendant denies each and every allegation in paragraph XI, except that defendant admits that the court in issuing the restraining orders mentioned in said paragraph did not comply with the provisions of the Norris-La Guardia Act.

X.

Defendant denies each and every allegation in paragraph XII thereof. [75]

XI.

Defendant denies each and every allegation in paragraphs XIII and XIV, except that defendant admits that the indictment referred to in said paragraph XIII is predicated upon violation of the amended temporary restraining order heretofore issued by the defendant as Circuit Judge Presiding at Chambers in Equity of said Fifth Circuit, that the proceedings under said indictment have been and still are pending before the Circuit Court of the Fifth Circuit and that said matter is on the calendar of said court for further proceedings on August 25, 1947.

XII.

Answering paragraph XV thereof, defendant re-asserts the defenses set out in paragraph III of this answer.

XIII.

Defendant denies each and every allegation in paragraph XVI and XVII thereof.

Answering paragraphs I and II of the second cause of action alleged in said complaint:

XIV.

Defendant repeats and realleges each and every allegation contained in paragraphs I to VII and X to XIII, both inclusive, of this answer, with the same force and effect as if repeated at length in this paragraph. [76]

XV.

Defendant denies each and every allegation contained in paragraph II of the second cause of action, except that defendant admits that it appears in the petition referred to in said paragraph that the order prayed for in said petition was to restrain trade unions and officers and members thereof involved in a labor dispute with the petitioner in said petition.

Answering paragraphs I and II of the third cause of action alleged in said complaint:

XVI.

Defendant repeats and re-alleges each and every allegation contained in paragraphs I to VII and X to XIII, both inclusive, of this answer, with the same force and effect as if repeated at length in this paragraph.

XVII.

Defendant denies each and every allegation in paragraph II of the third cause of action. With respect to the allegations as to the contents of the amended temporary restraining order and indict-

ment referred to in said paragraph, the same being allegations of law and the exhibits attached to the complaint containing the full text of said amended temporary restraining order and indictment, said allegations require no answer.

Answering paragraphs I to XV, inclusive, of the fourth cause of action alleged in said complaint:

XVIII.

Answering paragraphs I to IX of said fourth cause of action, defendant repeats and re-alleges each and every allegation contained in paragraphs I to VII, inclusive, of this answer, with the same force and effect as if repeated at length in this paragraph.

XIX.

Defendant denies each and every allegation in paragraph X of said fourth cause of action.

XX.

Defendant denies each and every allegation in paragraphs XI and XII of said fourth cause of action, except that defendant admits that the indictment referred to in said paragraph XII is predicated upon violations of the amended temporary restraining order heretofore issued by the defendant as Circuit Judge presiding at Chambers in Equity of said Fifth Circuit, that the proceedings under said indictment have been and still are pending before the Circuit Court of said Fifth Circuit and that said matter is on the calendar of said court for further proceedings on August 25, 1947.

XXI.

Answering paragraph XV thereof, defendant re-asserts the defenses set out in paragraph III of this answer.

XXII.

Defendant denies each and every allegation contained in paragraphs XVI and XVII of said fourth cause of action. [78]

XXIII.

Further answering said complaint, defendant denies each and every allegation in said complaint not herein admitted, or heretofore controverted or specifically denied.

XXIV.

For a further, separate and distinct defense, defendant alleges that the amended temporary restraining order referred to in said complaint was issued by defendant as Circuit Judge Presiding at Chambers in Equity in the Fifth Circuit, Territory of Hawaii, strictly in accordance with the powers vested in him as a Circuit Judge at Chambers; that, as alleged in paragraph VI of the first cause of action alleged in said complaint and admitted in paragraph V of this answer, a petition for injunction was filed in said court on September 17, 1946, in a cause numbered and entitled, Equity No. 120, Lihue Plantation Company, Limited, vs. ILWU (CIO), et al.; that on said date, an ex parte hearing was held before said court at which the court raised

on its own motion the question of its jurisdiction in the matter, particularly as to the effect thereon of the provisions of the Norris-LaGuardia and National Labor Relations Acts; that the question of the court's jurisdiction was argued at length by counsel for the petitioner with extensive citation of authorities; that at such hearing twenty-three affidavits were received in evidence and the testimony of nine witnesses was taken and heard by the court; that such evidence was deemed by the court to constitute a prima facie [79] showing that the respondents in said cause had exceeded the bounds of peaceful picketing and that the petitioner therein was threatened with irreparable injury; that pursuant to the prayer of said petition and a motion for temporary restraining order, an order to show cause and a temporary restraining order were issued upon the conclusion of said hearing; that at a hearing held on September 20, 1946, a motion to vacate and dissolve said temporary restraining order was orally presented by counsel for respondents, which the court denied after extensive argument by counsel for the parties and amicus curiae; that at the conclusion of said hearing, the cause was continued to September 23, 1946, at which time the court desired to take up, on its own motion, the matter of a possible modification of said temporary restraining order; that upon a hearing held on September 23, 1946, an amended temporary restraining order was entered by the court; that at such hearing, the absence of counsel for respondents was

noted, which was explained by a telegram received by the court from the regional director of the respondent union stating that their counsel were instructed not to appear at such hearing since the respondent union saw no purpose in being represented at a hearing to modify an order which it considered void in the first place; that said petition, summons, order to show cause and temporary restraining order were duly served on respondents severally, some on September 17, 1946, and others on September 21, 1946, and September 23, 1946; that pursuant to an [80] order for service, said amended temporary restraining order was also duly served on the respondents severally on September 23, 1946, September 24, 1946, and October 31, 1946; that on September 27, 1946, at the request of respondents and pursuant to the stipulation of the parties, an order was entered by the court extending the time within which respondents were to respond to the order to show cause to October 7, 1946, and a stipulation of the parties extending respondents' time to answer said petition to October 7, 1946, was approved by the court; that by stipulations and an order filed and entered on October 4, 1946, the matter was further continued to November 18, 1946; that on November 18, 1946, the matter was continued without day; that all of the matters alleged in this paragraph appear in the records and files of the Circuit Court of the Fifth Circuit, Territory of Hawaii, in that cause numbered and entitled, Equity No. 120, Lihue Plantation Company, Lim-

ited, vs. ILWU (CIO), et al.; that attached hereto and incorporated herein by reference are a certified copy of the records and files of said Circuit Court in said matter, marked Exhibit A, and a true and correct transcript of evidence taken at the hearing on September 17, 1946, marked Exhibit B.

Defenses in Law

XXV.

The complaint fails to state a cause of action for equitable relief in that criminal proceedings in the course [81] of which and on review of which all defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

XXVI.

The complaint fails to state a cause of action for equitable relief in that it appears upon the face of the complaint that it seeks to stay proceedings pending in a circuit court of the Territory, and that the case does not relate to any proceeding in bankruptcy.

XXVII.

This court has no jurisdiction to issue an injunction against the judge of a circuit court of the Territory of Hawaii.

XXVIII.

The judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain further proceedings in an action pending before such circuit court.

XXIX.

The complaint fails to state a cause of action for equitable relief or any other relief.

XXX.

The complaint fails to state a cause of action in that, as appears on the face of the complaint, the amended temporary restraining order issued in that certain [82] equity action numbered 120, appended to the complaint, was issued by the Honorable Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit, Territory of Hawaii, in the exercise of his powers as a circuit judge at chambers of the Territory of Hawaii.

That a Circuit Judge at Chambers of the Territory of Hawaii, pursuant to the Hawaiian Organic Act and the laws of the Territory of Hawaii, is a court of general jurisdiction with full equity powers and that its orders must be obeyed by persons subject to the jurisdiction of said court, until and unless set aside or reversed; that this is true whether or not the action of the court in issuing said amended temporary restraining order was

erroneous; that the said Circuit Court has jurisdiction to determine its own jurisdiction, and that violations of its amended temporary restraining order constitute criminal contempt irrespective of the ultimate disposition of the questions relating thereto raised herein by the plaintiffs' first and second causes of action, based on the Norris-LaGuardia and Clayton Acts; that the said Circuit Court has jurisdiction to determine questions of constitutional law, with power to issue an ex parte order for the purpose of preserving rights alleged to be unlawfully invaded to the irreparable injury of the petitioners in the territorial court, pending the return on the order to show cause why an injunction should not issue; and that violations of the amended temporary restraining order issued by defendant constitute criminal [83] contempt irrespective of the ultimate disposition of the questions raised herein by plaintiffs' third and fourth causes of action, based on the Norris-LaGuardia and Clayton Acts and the Constitution of the United States.

Dated at Honolulu, T. H., this 21st day of July, 1947.

/s/ RHODA V. LEWIS,

Acting Attorney General,

Attorney for Defendants.

EXHIBIT A

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

At Chambers—In Equity

Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), LO-
CAL 149 of the INTERNATIONAL LONG-
SHOREMEN'S AND WAREHOUSEMEN'S
UNION (CIO), Unit 1, Local 149 of the IN-
TERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), JO-
SEPH NUNES, DANIEL RAPOZO, FER-
NANDO FONTANILLA, THOMAS TAKE-
MOTO, SUNAO IWAMOTO, WILLIAM
PAIA, YOSHIKAZU MORIMOTO, BENJA-
MIN IIDA, GEORGE MASAKI, CHARLES
MORITA, RONALD TOYOFUKU, TAKU
AKAMA, JOHN DOE, MARY DOE, RICH-
ARD ROE, et al.,

Respondents.

CERTIFICATE OF DEPUTY CLERK
OF COURT

I, John Ilalaole, Jr., Deputy Clerk of the Cir-
cuit Court, Fifth Circuit, Territory of Hawaii, do

hereby certify that I have examined the files of said court and particularly the folder wherein are filed all pleadings, orders, exhibits, and papers pertinent to or in the above-entitled matter in equity and which are filed or of record therein and in said court and that such include and there is no other than those as follows:

(1) Petition for Injunction, Order to Show Cause.

(2) Petitioner's Exhibit No. 1—Affidavit of Ronald G. Watt.

(3) Petitioner's Exhibit No. 2—Affidavit of Keith B. Tester.

(4) Petitioner's Exhibit No. 3—Affidavit of Antone Camara.

(5) Petitioner's Exhibit No. 4—Affidavit of Hale C. Cheatham.

(6) Petitioner's Exhibit No. 5—Affidavit of Wm. A. H. Buddingh. [86]

(7) Petitioner's Exhibit No. 6—Affidavit of Norbert Penna.

(8) Petitioner's Exhibit No. 7—Affidavit of Courtland E. Ashton.

(9) Petitioner's Exhibit No. 8—Affidavit of Leonard T. Cannon.

(10) Petitioner's Exhibit No. 9—Affidavit of Alexander G. Hutton.

(11) Petitioner's Exhibit No. 10—Affidavit of Harry Nogami.

(12) Petitioner's Exhibit No. 11—Affidavit of Courtland E. Ashton.

(13) Petitioner's Exhibit No. 12—Affidavit of Wm. A. H. Buddingh.

(14) Petitioner's Exhibit No. 13—Affidavit of Ronald G. Watt.

(15) Petitioner's Exhibit No. 14—Affidavit of John S. Carvalho.

(16) Petitioner's Exhibit No. 15—Affidavit of Mary Soares.

(17) Petitioner's Exhibit No. 16—Affidavit of Georgina Rosa.

(18) Petitioner's Exhibit No. 17—Affidavit of Mr. and Mrs. Antone Camara.

(19) Petitioner's Exhibit No. 18—Affidavit of Charles J. Fern.

(20) Petitioner's Exhibit No. 19—Affidavit of C. E. S. Burns.

(21) Petitioner's Exhibit No. 20—Affidavit of John Travasso.

(22) Petitioner's Exhibit No. 21—Affidavit of Frank Barretto.

(23) Petitioner's Exhibit No. 22—Affidavit of Ira W. Newton.

(24) Petitioner's Exhibit No. 23—Affidavit of James P. Langley.

(25) Petitioner's Exhibit No. 24—Letter from Y. Morimoto, Business Agent, ILWU, Local 149, to Lihue Plantation Company, Ltd.

- (26) Clerk's Minutes—September 17, 1946.
- (27) Motion for Temporary Restraining Order.
- (28) Order to Show Cause.
- (29) Temporary Restraining Order.
- (30) Chambers Summons. [87]
- (31) Telegram Received from C. Nils Tavares to Judge Philip L. Rice.
- (32) Clerk's Minutes—September 20, 1946.
- (33) Court's Exhibit No. 1—Radiogram received from Jack Hall, Regional Director, ILWU.
- (34) Clerk's Minutes—September 23, 1946.
- (35) Amended Temporary Restraining Order.
- (36) Order for Service of Copies of Amended Temporary Restraining Order.
- (37) Officer's Returns on Temporary Restraining Order.
- (38) Officer's Returns on Amended Temporary Restraining Order.
- (39) Radiogram received from Richard Gladstein & Montgomery Winn.
- (40) Stipulation and Order Extending Time on Order to Show Cause.
- (41) Stipulation Extending Time.
- (42) Clerk's Minutes—September 27, 1946.
- (43) Stipulation Extending Time.
- (44) Stipulation and Order Extending Time on Order to Show Cause.

(45) Transcript of Oral Motion on behalf of Respondents to Dissolve and Vacate the Temporary Restraining Order, and Oral Decisions and Ruling of the Court on said Motion.

(46) Officer's Returns on Amended Temporary Restraining Order.

(47) Clerk's Minutes—November 18, 1946.

I further certify that the hereinabove specified and listed pleadings, orders, exhibits, and papers constitute all of the record of and in the above-entitled equity matter at the date hereof and that a certified copy of each is hereto attached.

Witness my hand and the seal of the Circuit Court of the Fifth Circuit, Territory of Hawaii, at Lihue, County of Kauai, Territory of Hawaii, this 3rd day of July, 1947.

[Seal] /s/ JOHN ILALAOLE, JR.,
Deputy Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original.

 /s/ SAMUEL H. KIMURA,
File Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii. [88]

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

At Chambers—In Equity

Eq. No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), LO-
CAL 149 of the INTERNATIONAL LONG-
SHOREMEN'S AND WAREHOUSEMEN'S
UNION (CIO), Unit 1, Local 149 of the IN-
TERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), JO-
SEPH NUNES, DANIEL RAPOZO, FER-
NANDO FONTANILLA, THOMAS TAKE-
MOTO, SUNAO IWAMOTO, WILLIAM
PAIA, YOSHIKAZU MORIMOTO, BENJA-
MIN IIDA, GEORGE MASAKI, CHARLES
MORITA, RONALD TOYOFUKU, TAKU
AKAMA, JOHN DOE, MARY DOE, RICH-
ARD ROE, et al.,

Respondents.

PETITION FOR INJUNCTION ORDER
TO SHOW CAUSE

Vitousek, Pratt & Winn, 404 Alexander & Bald-
win Bldg., Honolulu, T. H., Attorneys for Peti-
tioner. [89]

To the Honorable Philipp Rice, Judge of the Above-Entitled Court, Presiding at Chambers in Equity:

Comes now, The Lihue Plantation Company, Limited, Petitioner herein, and respectfully alleges and shows as follows:

I.

That the Petitioner, The Lihue Plantation Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii with its main offices located in Honolulu, City and County of Honolulu, Territory of Hawaii; [90]

II.

That the Respondent, International Longshoremen's and Warehousemen's Union (CIO), is an unincorporated labor union association, whose regional offices in the Territory of Hawaii are located at Pier 11, Queen Street, City and County of Honolulu, Territory, and whose main offices are located in San Francisco, California;

III.

That the Respondent Local 149 of the International Longshoremen's and Warehousemen's Union, is a local union of the above-named Respondent International Longshoremen's and Warehousemen's Union, and is composed of units for each of the sugar plantations located in the Territory of Hawaii; that so far as the Petitioners has been able to

ascertain, the offices of said Local 149 are located at Pier 11, South Queen Street, City and County of Honolulu, Territory of Hawaii;

IV.

That the Respondent Unit 1, Local 149, International Longshoremen's and Warehousemen's Union, is an unincorporated association, and a unit of the Respondent Local 149 referred to in Paragraph III herein above; that said Unit is composed of certain employee members from among the employees of the Petitioner; and that the offices of said Unit are located at Kapaia, County of Kauai, Territory of Hawaii; [91]

V.

That upon information and belief of the Petitioner, the individual named Respondents, Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, and Sunao Iwamoto are President, First Vice-President, Second Vice-President, Recording Secretary, and Financial Secretary, respectively, of the Respondent Union Local 149, Unit 1; that Respondent William Paia is the Island President of said Respondent Union Local 149; that Yoshikazu Morimoto is Business Agent of said Respondent Union Local 149 for the Island of Kauai; that the individual named Respondents Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama are each members of the above Respondent Unit 1, Local 149; that each of the above-named individual Respondents are res-

idents of the Island of Kauai, Territory of Hawaii; that the individual unnamed Respondents are unknown and for that reason certain fictitious names are used; that said individual unnamed Respondents include members of the above-named Respondent Unit 1, Local 149, Respondent Local 149, and Respondent International Longshoremen's and Warehousemen's Union, their officers, agents and servants, and others acting in concert and participation with the Respondents;

VI.

That the Respondent International Longshoremen's and Warehousemen's Union, Local 149, did, on the first day of September, 1946, call out on strike the Petitioner's employees at the Petitioner's plantation located in the County of Kauai, Territory of Hawaii; that the Respondents, their agents, servants and employees, and others in active concert and participation with them have congregated and still continue to congregate in mobs and as picketers at times in excess of two hundred (200) persons, near or upon plantation property in the immediate vicinity of the entrances to the mill, store, and other premises of the Petitioner, in a disorderly and unlawful manner, and have wilfully and maliciously blocked and continue to block the entrances to the Petitioner's premises; that said Respondents, their agents, servants and employees and others in active concert and participation with them continue to congregate at all hours of the day and especially when Petitioner's supervisory per-

sonnel and other employees seek to enter upon the mill premises; that said Respondents, their agents, servants and employees and others in active concert and participation with them have indicated by their actions and otherwise their firm intention to deny and have denied to the Petitioner lawful entry upon its premises, and to deny entry to any other persons lawfully seeking to enter upon said premises, whether for the purposes of general maintenance and repair, proper protection and operation of utility equipment serving the community, preservation of foodstuffs, or operations directed to the care of growing crops and the undertaking of customary operations in connection therewith; that said mobs and picketers are at times boisterous, and use offensive, disorderly, abusive and insulting language, directing it at the employees of the Petitioner; that the Respondents, their agents, servants and employees, and others in active concert and participation with them, have threatened and still continue [93] to threaten Petitioner's employees with serious injury to their persons if they do not accede to Respondent's demands or if they attempt to proceed to work and to perform work; that said picketers and their activities as specified, have threatened to cause and have in fact caused numerous breaches of the peace; that the Respondents, their agents, servants and employees, and those in active concert and participation with them, unlawfully have picketed in numbers at times in excess of one hundred and fifty (150) persons, and are

continuing to picket many of the homes of the Petitioner's employees; that the said Respondents, their agents, servants, and employees and those in active concert and participation with them have congregated in front and around of the said homes and have used offensive, abusive, disorderly and insulting language and have caused disturbances by undue noise and unseemly acts so as to annoy, disturb, and be offensive to others; that said Respondents, their agents, servants, and employees and those others in active concert and participation with them have used threatening and intimidating language towards the Petitioner's employees concerning the safety of their families, and by their congregating have frightened and intimidated the members of the families of the Petitioner's employees; that the Respondents, their agents, servants and employees and those in active concert and participation with them unlawfully have picketed many roads and streets throughout plantation property, stopping and intimidating any and all persons seeking ingress on such roads and streets; [94]

VII.

That by reason of the conduct of the Respondents set forth in Paragraph VI, said Respondents have obstructed the means of ingress and egress used by Petitioner's employees to and from said mill, store and other plantation premises and have intimidated Petitioner's employees desiring to enter or proceed in and from said premises;

VIII.

That by reason of the conduct of the Respondents set forth in Paragraph VI above, and by false and misleading statements to the employees of Petitioner, the Respondents have wilfully, unlawfully and maliciously prevented a number of persons from continuing in the active employ of Petitioner and from entering said plant to work or to seek employment with the Petitioner;

IX.

That by reason of the conduct of the Respondents and their agents, servants and employees and others in concert and participation with them, as set forth in Paragraphs VI, VII, and VIII, Petitioner has been unable to repair or operate its mill, to irrigate its fields, properly maintain its utilities, protect its foodstuffs, or otherwise to perform even essential maintenance of equipment; that the unlawful acts set forth in this petition have been committed and that such acts will be continued, unless restrained; and that substantial and irreparable injury to the Petitioner's property will follow unless the requested relief is granted; [95]

X.

That, upon information and belief, the conduct of the Respondents, set forth in Paragraphs VI, VII, and VIII, above, will continue unless restrained;

XI.

That the Petitioner has no adequate remedy at law; Wherefore, Petitioner prays:

(1) That an order issue out of and under the seal of this Honorable Court as provided by law directed to the Respondents herein ordering them to appear ten days from the date of the filing of this petition and at a place to be designated by the Court and then and there to show cause, if any they have, why the injunction herein petitioned for should not be entered and issue; and

(2) That after a hearing hereon an order be entered herein restraining and enjoining the Respondents and each of them from in any way

(a) Interfering with the ingress and egress from the Petitioner's mill, store or other plantation buildings and premises located in the County of Kauai, Territory of Hawaii, by the Petitioner, its employees, or any others who may enter said premises for the purpose of performing work or for other lawful occasion;

(b) Threatening violence or using coercion or intimidation by force of numbers or otherwise, or other unlawful means upon the employees of the Petitioner or those seeking employment with the Petitioner, or others lawfully entering upon the Petitioner's premises or proceeding to or from said premises; [96]

(c) Coercing or intimidating employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety and welfare of any of the Petitioner's employees families or those seek-

ing employment with the Petitioner; or coercing or intimidating the families of the Petitioner's employees;

(d) Visiting the homes of the Petitioner's employees or persons seeking employment with the Petitioner or approaching, following or trailing any of said persons at any place whatsoever in an offensive, disorderly, threatening or intimidating manner, or in such a manner as to provoke a breach of the peace;

(e) Picketing the homes of the Petitioner's employees or persons seeking employment with the Petitioner;

(f) Making, uttering or circulating any false, deceitful or untrue statements with reference to the Petitioner, its employment practices, and its employees working therein, or others seeking to work therein;

(g) Mass picketing or other congregating in crowds on or near the premises of the Petitioner;

(3) That the Court fix the proper number of pickets and restrain the Respondents from picketing the Petitioner's mill, offices, stores or other buildings or premises with more than the number so fixed by the Court, such pickets to wear badges reading "Authorized Picket"; [97]

(4) That the Court grant such other and further relief as the Petitioner may be entitled to in equity.

Dated: Lihue, Kauai, T. H., 16th September, 1946.

/s/ C. E. S. BURNS.

Territory of Hawaii,
County of Kauai—ss.

C. E. S. Burns, being first duly sworn, on oath deposes and says, That he is Manager of The Lihue Plantation Company, Limited, the Petitioner named herein; that he has read the foregoing petition, knows the contents thereof and that the allegations contained herein are true and correct, except the allegations made on information and belief and as to those he believes them to be true.

/s/ C. E. S. BURNS.

Subscribed and sworn to before me this 16th day of September, 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946.

PETITIONER'S EXHIBIT NO. 1

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Ronald G. Watt, being first duly sworn do depose and say as follows:

That I am employed as factory superintendent of The Lihue Plantation Company, Limited, having been employed by said company since January 15, 1944.

That on September 14, 1946, I arrived at the Lihue Plantation factory about 5:15 a.m. and proceeded to drive into the south entrance as usual. I encountered a solid line of pickets approximately ten deep and estimated that there were approximately 75 to 100 men in that group. I had to apply my brakes rather suddenly to keep from running into them and my car was immediately surrounded and pushed backwards. The two men doing most of the talking and giving instructions to the pickets were Gregorio Reyes Navarro and George Masaki. Several of the pickets who surrounded the car started to pick the car up and bounce it around. It was immediately apparent to me that I was not going to be allowed to enter the mill and that I was in personal danger judging by the threatening attitude of the men.

Gregorio Reyes Navarro stood in front of the car with his hands on the radiator and told me that no one could come in the mill. George Masaki was at that time standing at the window of the car so I

asked him what was going on. Whether he then asked or some other person, I was not certain but I was asked where I was going. I stated I was going into the mill. There was then a lot of shouting and cat-calling while the mob pressed closer around the car. At this time they were [99] pushing the car from side to side and then some of them proceeded to lift up the car from the rear. I then put the car into reverse and succeeded in backing up into the government road as they opened up behind the car. I drove over towards the Lihue Garage, located next to the warehouse and met Mr. Keith Tester, Assistant Manager of the plantation. I then saw Mr. Buddingh, Chief Engineer, and Antone Camara, Shift Engineer, being jostled around, being shouldered and elbowed, preventing them from going through the picket line to enter the mill. This was at the warehouse entrance, and the mob here numbered about 50 to 75, and being reinforced constantly with additional numbers. There was much milling around. Mr. Tester and I then walked over towards Camara and Buddingh. Mr. Tester was more or less swallowed up by the crowd, then he returned with Camara and Buddingh. Then I suggested we call the police to try to open up the picket lines. Then Mr. Tester and I drove our respective cars to the main entrance, the south entrance. At that time I witnessed Mr. Cheatham, Electrical Superintendent, drive in towards the picket line at that entrance. The crowd then milled around his truck in a similar manner to that which happened to me. Mr. Tester asked for the picket captain, but nobody

spoke up. Ben Iida, one of the union members talked to Mr. Tester. This occurred amidst much booing and yelling. Mr. Tester then left to get the police. I then parked by the sugar room and talked to Cheatham, who had left his truck amidst the pickets. Mr. Tester returned and approximately ten minutes later, a police officer arrived and the situation explained to him. In about fifteen more minutes, Lieutenant J. S. Carvalho, of the police, arrived, and he in turn was asked by Mr. Tester and myself to take action in opening up the picket line. Then the Assistant Chief of Police, Fernandes, arrived in about twenty minutes. The shouting and milling around continued [100] throughout this entire time. At about this time working supervisors commenced to arrive and were immediately greeted with shouts and cat-calls. I explained the situation to them as they arrived. I advised them to stay in their cars and avoid trouble. The Assistant Chief of Police then called the Chief of Police and the Chief then spent most all of his time in a conference with the Union representatives. This continued for about an hour without any change in the situation. Mr. Burns, the Plantation Manager, arrived, driving his car through the mill premises from the north entrance with pickets hanging onto his car in an obvious effort to force him to stop, amidst much shouting and cat-calling. Mr. Burns then tried to talk to the Police Chief, but the Chief indicated that he was preoccupied with the Union leaders.

Mr. Burns finally instructed me to have my men return home, it being obvious that the mob was de-

terminated to deny all entrance to the mill. This was about 10:00 a.m. After making certain that all of my men were accounted for, I left the mill area.

Further affiant sayeth not.

/s/ RONALD G. WATT.

Subscribed and sworn to before me this 15th day of September, 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946.

PETITIONER'S EXHIBIT NO. 2

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Keith B. Tester, being first duly sworn do depose and say as follows:

That I am employed as Assistant Manager, of The Lihue Plantation Company, Limited, having been employed by said company since January 1st, 1946.

That, I arrived at the Lihue Garage stand at 5:00 a.m. At that time the pickets were assembling. There were probably about 100 around the mill and vicinity. Between 5 o'clock and 5:30 it appeared to me that several hundred more arrived. Several truck loads from outside came and joined the mob. About 5:15 a hundred or so pickets lined up against the wall of the garage parallel to my car. Those in the garage were myself, Jim Langley, Hank Buddingh, Norbert Penna, Tony Camara and John Travasso, all employees of the company. About 5:20 I entered my car to go to Hanamaulu. Simultaneously Mr. R. G. Watt, Factory Superintendent, drove down toward the main entrance to the mill to his office. At this time there was a tremendous amount of shouting and booing and name calling and Mr. Buddingh called my attention to the fact that Mr. Watt's car had been stopped. I turned my car around and headed in the direction of Hanamaulu. At that time Hank Buddingh, Camara and Penna started to walk toward the mill in the direction of the sugar room. I stopped my car and witnessed violent shoving and pushing being received by these men. I got out and walked toward them. After they had been pushed around, they came over toward the road and while the pickets were following Mr. Buddingh and Camara toward the road, Penna managed to squeeze by and get into the mill. I then went over to the picket line in front of the main entrance to the mill and asked [102] for the picket captain. After some heckling Ben Iida

stepped forward. I asked them if they had received instructions from the Sheriff to open up a way in the picket lines for automobiles and pedestrians. He answered "No." I then asked if he intended to open up for the cars and those who wanted to work in the mill. He again stated "No." A few minutes after this, Mr. Cheatham came with his pickup truck to go to the mill power house. His car was also forcibly stopped and after some arguing Mr. Cheatham stepped out and joined the rest of us. After talking things over with Mr. Watt we decided it would be better to go up and see if we could contact the police. So I immediately left for the County Building and requested the police to come to the mill. I then returned to the mill site.

That, at about 5:35 a.m., one policeman arrived and, after being asked if he would open the picket line, stated he could take no action until given orders from his superiors. I then called for others from the police force to come down. In the meantime additional strike pickets arrived from Hanamaula bring the total number probably to around 600 to 700.

That, after Lt. Carvalho of the police force arrived we again requested the picket line to be opened up and suggested that several of us might attempt to go through on foot. He directed us not to take any such action but to stand fast until the assistant chief of police came. Similar requests were made to the assistant chief, Antone Fernandes, when he arrived—and he also ordered us to stand fast until he had determined what action should be taken.

That, in the meantime most of those who are turning out to work in the mill had arrived in their cars. No attempt was made to go through the picket lines at that time. Mr. Burns was then called and given a picture of conditions at the factory. Soon after this, he arrived on the scene. [103]

That Yoshikazu Morimoto, an employee on leave and Island business agent for the I.L.W.U., arrived at about this time. Chief Crowell immediately went over and talked with Morimoto and a group of union men. Mr. Burns, on several occasions went over to the chief and asked what he was going to do and his reply was to "wait." After waiting a while Mr. Burns and I went over to the edge of the group to which the chief was talking and Mr. Burns asked to have the road opened up. The chief said "wait." The group of union men objected to Mr. Burns and I being there while they were talking with the chief and Mr. Burns stated that we were on a public road and we would stay unless the chief requested that we leave. After several minutes the chief, in answer to a direct question by the union spokesman, to him, as to whether he would request us to leave, turned to Mr. Burns and said we had better leave.

At little later, at 7:55 a.m., Mr. Burns and myself again went to the chief who was still in discussion with the union members, and requested that the

roads be opened for employees and the public. The chief of police asked that we wait until he got through with "these boys." Mr. Burns said "I am asking again to have these roads opened up." The chief then answered "wait." We walked off. Some time later the chief came over to Mr. Burns, who called myself and Rockwell Smith over to listen in, and the chief stated that in his discussion with the union men, they were willing to let Messrs. Burns, Tester, Watt and perhaps Mr. Smith through the picket line, but no others. Mr. Burns said I am asking to have this road opened up for all of our employees. In the discussion the police chief stated that the pickets would not allow the others to go through and that there would be bloodshed if they attempted. Mr. Burns stated that he did not want violence, but thought that the police department should see to getting the road opened up for all, and he would think that if they had stated that there would be bloodshed the police department should call in the police from other districts and keep the situation under control and see that there was no violence, and that the [104] roads were opened up. The chief then walked off, and Mr. Burns instructed those of us who could be spared to go off to breakfast.

That from the above it was clear that the pickets had barred all entrances to the mill and it was their firm intention which they proceeded to carry out, that only specified personnel were to be permitted

to enter the mill premises. All of the above took place on Saturday morning, September 14, 1946.

Further affiant sayeth not.

/s/ KEITH B. TESTER.

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [105]

PETITIONER'S EXHIBIT NO. 3

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Antone Camara, being first duly sworn do depose and say as follows:

That I am employed as shift engineer at the mill, of The Lihue Plantation Company, Limited, having been employed by said company since 1933.

That, I was on duty at the mill on the night of September 13th to 14th, 1946, on guard shift. Mr. Buddingh, chief engineer and my boss, came to the mill at about 4:00 a.m. Then Mr. Buddingh and I went to the garage and talked with Mr. Tester and Johnny Travasso. While at the garage the men started to come in mill premises about 4:45 a.m., or 5 a.m., I am not sure about the exact time. Mr. Buddingh and I intended to go back to the mill and they then stopped us by forming a group of about one hundred men in front of us, preventing us from going in. Some of the men were plantation workers on strike, while others were unknown to me. We tried to go through the line but we were blocked with force—they shoved us around and pushed back. They closed their fists, and then Mr. Buddingh and I backed out and went to join Mr. Tester who was standing nearby. They yelled out asking if we knew what was the meaning of scab—they then said if we don't know the meaning of scab—it meant "A scab is a two-legged dog." Some of them would ask the questions and then others of them would give the answers. As we were standing on the road, Mr. Cheatham came down and tried to go through into the mill and they stopped him. These men were very noisy and rough, booing and calling names. They also yelled at me and said, "Tony, you don't join the union because you think that will make Mr. Burns give you a fat raise." [106]

That, there was present in the mill premises when the above occurred, George Masaki, picket chairman of the union, and later Morimoto, business agent of the union, who were present for some considerable time during which the picketing continued with all the shouting.

That, I witnessed the pickets crowd around and force Mr. Cheathan to stop his truck so he could not drive it in the mill.

Further affiant sayeth not.

/s/ MR. ANTONE CAMARA.

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [107]

PETITIONER'S EXHIBIT NO. 4

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Hale C. Cheatheam, having been first duly sworn, do depose and say as follows:

That I am employed as chief electrician of The Lihue Plantation Company, Limited, having been employed by said company since 1927.

I got a phone call from Norbert Penna, acting watchman at the mill, approximately at 5:00 a.m. this morning (September 14, 1946), stating that there was trouble at the mill and that Mr. Buddingh and Mr. Watt were surrounded by pickets. I looked out of my window and noticed that the street lights were off; the street lights were off earlier than usual. So I thought I had better go down to the mill to see why they were off—and also to see if the trouble was in my department. I went down to the mill in my plantation work truck and arrived at the mill at approximately 5:15 a.m. As I turned the corner to enter the private road which is the front entrance to the mill, the road was blocked by approximately one hundred or more of what I assumed to be pickets. They were across the road in a body or group of about fifteen men deep. So I slowed down and tried to go through the group of men and the crowd parted and I was able

to get about half the way through this group of pickets. I was going very slowly and was almost at a standstill. At that time the men were in front and on both sides of the car and grabbed the car and I was unable to proceed any further. One of the boys, M. Sano, who works for me, as an [108] electrician, came through the crowd to the door of the truck and informed me that no one was to get in the mill or out of the mill today. I explained to him that I was on a trouble call and would like to get through to the mill and he again replied that "nobody gets through into or out of the mill today and that we mean it." So I explained to him again that I was on a trouble call and wanted to get into the mill and would leave as soon as I could, and again his reply was "Nobody gets into the mill or out of the mill and we mean it." So I said "O.K. I will leave." While starting up my truck, the gang still surrounding it, my foot slipped off the brake and the car jerked ahead about six inches. At this time all persons were clear of the car by several feet. One of the boys, Ben Iida by name, came walking around to the driver's side of the car, drawing up the pants legs of his trousers and claimed I hit him and invited me out to fight. I ignored him and M. Sano started talking to me again. The rest of the men quieted Ben Iida down. While talking to M. Sano, several of the boys opened the door of the car on the driver's side and removed the key to the truck. After listening to M. Sano again, he told me that "Nobody would enter

or leave the mill today.” The boy who took the key out of the car gave the key back to me. All this time I was in the driver’s seat of the truck and had not gotten out of the truck.

At this time, the assistant manager, Mr. Tester, and the mill superintendent, Mr. Watt, who had started walking down the road from the warehouse at the beginning of this incident, reached the side of the car and asked me to leave the car there and come back with them. I left the car and followed them back to the edge of the Government highway.

From the time I arrived at the mill road entrance at about 5:15 a.m., until I left at approximately 8:30 a.m., the pickets were formed in a line about eight to fifteen men deep and barred the entrance to the mill; other than Mr. Penna, to my knowledge no person was able to cross the picket lines and enter the mill.

On September 14, 1946, at 3:30 p.m., I attempted to enter the mill to make a check of my department to ascertain whether the peak electrical load required at night could be taken care of. I drove to the mill in my truck. As I left the Government road, there was a road block on the plantation road made up of railroad ties, rocks, picket signs and boxes which made it impossible to proceed. Back of this road block was an automobile and alongside were two pickets who shouted “stop” as I approached.

I stopped the car and the pickets continued to yell and shout; in about two minutes a total of nine

pickets assembled at the road block. I backed my car away. I drove toward the warehouse and found another road block made up of stones, railroad ties, boxes, picket signs, which completely obstructed the road. I drove to the back entrance of the mill and found wire across the road which blocked my entrance—two pickets were stationed there.

All road blocks and pickets at the road blocks were on plantation property and it was impossible for me to enter the mill.

Further affiant sayeth not.

/s/ HALE C. CHEATHAM,

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [110]

PETITIONER'S EXHIBIT NO. 5

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Wm. A. H. Buddingh, being first duly sworn
do depose and say as follows:

That I am employed as chief engineer of The
Lihue Plantation Company, Limited, having been
employed by said company since April 1, 1945.

That I arrived at the mill at 4:00 a.m., and found
everything peaceful. A few pickets were at the
south entrance as I came in and I found the two
watchmen, Penna and Camara, in good spirits, re-
porting no incidents during the night. As a matter
of fact, they made the statement that there were
very few pickets on duty that night. About 4:30
or 4:45 a.m., the three of us went to the garage and
met John Travasso, the camp policeman. After
talking with him for a while I made the statement
that one truck had already arrived with one load
of pickets, presumably from Grove Farm or
Koloa—but I don't know for sure. There were no
actions of violence up to that time. After a few
minutes Jim Langley, section overseer, and Keith
Tester, assistant manager, arrived and we were dis-
cussing the general situation of mass picketing.
During this period pickets were assembling in great
numbers, I would guess between one hundred to one
hundred fifty men were at the garage west of the
company warehouse, which is located on company

property. All of a sudden a group of pickets proceeded to form a line, shoulder to shoulder, starting from the garage south toward the warehouse and fire station. At that time I suggested to Tony Camara, "let us proceed to go into the factory to see if any other pickets had assembled at the other entrances." When we started towards the [111] mill the pickets, in mass, formed a line about 5 to 7 men deep, shoulder to shoulder, and barred our way. On our second attempt to go through, we were stopped and pushed from about the middle of the parking lot to the oil drums in front of the warehouse. Following the second attempt Keith Tester told us to lay off and refrain from any further attempts until the proper authorities were notified. Tom Watt, mill superintendent, arrived at about the time of these proceedings—definite time I would not be able to vouch for. During this incident much cat-calling and booing occurred and questions and answers given by the mob of pickets such as:

What is a scab?

Down with the scabs.

A scab is a dog on two legs.

And various booings and what-not.

That during the attempt to stop Tony Camara and myself, Penna managed to out-flank the picket line and get in back of them. After which I gave him the high sign not to wait for us but to proceed into the factory where he remained until I left the mill site around 8:30 a.m. After the police arrived on the scene I had no active part in any of the proceedings.

That Jose Bernal from Hanamaulu shouted after Mr. Burns had arrived at the scene “you won’t be manager any longer because we don’t want to work for you.”

That Yoichi Watada, carpenter shop foreman, was also barred by the pickets from entering the mill area where his shops and office are located. The pickets shouted at Watada and said that if he had joined the union when they had tried to force him to, he would now be on their side and not with a group of scabs and haoles.

That I heard another picket say in effect: “Down with Buddingh as chief engineer—send him back to McBryde—we will make Bill Paia our chief engineer. [112]

Further affiant sayeth not.

/s/ WM. A. H. BUDDINGH.

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [113]

PETITIONER'S EXHIBIT NO. 6

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Norbert Penna, having been first duly sworn,
do depose and say as follows:

That I am employed as fireroom foreman of The Lihue Plantation Company, Limited, having been employed by said company for 18 years.

I reported for work at the mill as acting watchman at 6:00 p.m., on September 13, 1946, and at about 5:00 a.m., on September 14, 1946, Mr. Buddingh, Tony Camara and myself were sitting down by the truck house that is close to the warehouse—union members started gathering around the truck house, and then Mr. Tester came along and we stayed there and had a little talk. Mr. Tester got up and went to his car. So the three of us, Buddingh, Tony Camara and myself, stood up and we were going to make another tour around the mill. Then about fifty pickets surrounded Mr. Tester's car and said "Hold that car." Then they stopped and they started gathering around us. Tester got off his car and walked to a man and said "You want to stop my car?" And he said, "No." So Tester got in his car and turned his car around. Then we three started to walk toward the mill; at this time the pickets pushed and strong armed us back—then the mob of about fifty pickets gathered around Mr. Buddingh and Tony Camara, so that it was im-

possible for Mr. Buddingh and Tony to move. At this time two men were in front of me. I moved around them and entered the mill. [114]

From the mill I noticed that Mr. Watt was coming down in his car and they surrounded Mr. Watt. By that time the mob grew bigger and they formed a thick blockade to the mill entrance so that not even a child could go through. The mob turned around and saw me—and they said, “There is one of the dirty dogs—you a scab, you won’t be able to come out of that mill—we will let you starve and rot in that mill—have you got any food there?” Then by that time the police arrived. From where I was standing in the mill, it seems they were talking to Mr. Watt, Buddingh and Tony Camara. And it was then I saw Mr. Burns try to go through the line with his car from the mill to the main highway and they started to call him “scab.” He tooted his horn. I saw some policeman walk toward Mr. Burn’s car. The crowd very slowly opened up and a very little hole was made for his car to move out from the private road toward the main highway. From the place where I was I could see Mr. Burns get out of his car. When he did that this gang all started booing and calling him “scab.” He talked with the Supervisors and to Mr. Watt—then he walked to the policemen, then back to Mr. Watt, and the Supervisors—but the policemen seemed to be doing nothing. The crowd all started booing and calling “scabs”—then from where I was I waited to see what would become of it. They continuously looked to my side and repeated, “Scab—you dirty

dog—Come in now and join us and you will be better off—All your bosses cannot do anything for you.” I waited and finally from the main highway Mr. Watt signalled me to come out to the main highway. Then all the supervisors were told to go home. I went home at about 9:30 a.m., and I don’t know what happened after that. [115]

There were between three hundred and four hundred pickets on the plantation property and they were so close in line that no one could have gotten through.

Further, affiant sayeth not.

/s/ NORBERT PENNA.

Subscribed and sworn to before me this 15th day of September, 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory
of Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [116]

PETITIONER'S EXHIBIT No. 7

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Courtland E. Ashton, being first duly sworn do
depose and say as follows:

That I am employed as Head Sugar Boiler, of
The Lihue Plantation Company, Limited, having
been employed by said company since March, 1945.

That when I arrived at the mill about 6:15 a.m.,
September 14, 1946, I found many company cars
jammed into the road that enters the mill—among
them was Hale Cheatham's car, the head electrician,
and the carpenters car which was driven by Mr.
Prueser, the head blacksmith—so I stopped my car
and got out and the gang on the road yelled: "We
want Ashton, We want Ashton," stating this in a
defiant manner amounting to a dare. I asked Tom
Watt if I could go through and he said, "Better
wait awhile." Then I went over and saw the two
policemen who were standing there and asked them
if this wasn't a private roadway and asked them
why I should not be admitted—and they said they
would have to wait for the Chief. In my opinion
there were from the entrance to the warehouse down
to the road to the mill proper about two hundred
and fifty pickets or men scattered around strung
out and moving back and forth. I found them to
be extremely noisy and unruly, booing everybody,

calling them by name. Some of them yelled out to Mr. Burns stating that "You will not be manager next year—as nobody will work for you."

That it was clear to me that anyone attempting to enter the mill would be stopped immediately.

That, about 5:00 p.m., the same day I drove by the mill yard and saw blockades had been erected by the men, which consisted of skips piled up and boxes, and in some cases wires were stretched across, all at the warehouse entrance. At the main entrance and in the mill yard there was a car parked directly across the road preventing access to the mill. I could see men around at various places.

Further affiant sayeth not.

/s/ COURTLAND E. ASHTON.

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

/s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [118]

PETITIONER'S EXHIBIT No. 8

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Leonard T. Cannon, having been first duly sworn, do depose and say as follows:

That I am employed as Assistant Manager of Lihue Store, having been employed by said company since May 1934.

That picketing started at the store on September 3rd, 1946, with approximately seventy-five pickets surrounding the doorways at 7:30 a.m. They made no attempt to stop the department heads or myself from entering the building. The same condition prevailed until Saturday, September 7th, 1946, when at 11:30 a.m., Ben Iida, Jr., an employee on strike, active in Union strike strategy, stopped me on the street and stated that under no circumstances would anyone be allowed through our front door on Monday morning, September 9th, 1946, as they were going to throw up a solid wall of pickets, shoulder to shoulder, and that if I wanted to go through I would have to get a policeman to order them to make a passageway. I sent the department heads home at noon on that day, and the pickets left the store at about 2:30 p.m., leaving a few so-called union police on the front veranda and at the driveways. Mr. Burns instructed me to attempt to go through the

front door as usual. As all of our department heads had been entering the store from the back, I instructed them to follow their usual procedure on Monday morning. On Sunday evening, September 8th, 1946, I had several callers, consisting of store department heads, who were quite alarmed at the threats made directly to them by the union members, as to what would happen to them if they did not join the union. These threats consisted [119] of misrepresentation concerning their not having any job when the strike was over, as well as threats of mass picketing of their homes. I telephoned Mr. Burns and gave him a statement regarding the conversations. Later in the evening, Mr. Burns stopped at my home and suggested that in view of the union's determination on the blockading of the store that I should use the rear, private entrance until further notice. When I arrived at work on Monday, September 9, 1946, there were approximately one hundred pickets on the front veranda standing shoulder to shoulder. In view of the warnings given me by the union representatives and the attitude of the pickets, I proceeded through the back entrance. Sandy Hutton, Store Department Head, was refused admission at the entrance opposite the Bank of Hawaii. Sakai Muroka, Grocery Department Manager, called me from the Tip Top Cafe stating that both he and Hutton had been refused entrance at the road next to the Von Hamm Young Co., Ltd. At 9:30 a.m., E. K. Fujimoto, Temporary Manager, Meat Department, called on me, person-

ally stating that he was going out on strike. Kay Arita, Supervisor in charge of the vegetable department, resigned from the company. Sandy Hutton called and informed me that he had been refused admittance. I asked him to attempt once more to go through the line. He was stopped again. I sent him home for the balance of the day. On Tuesday, September 10, 1946, there were very few pickets in front of the store. Most of them were grouped in the doorways. This condition prevailed until Saturday, September 14, 1946. Raymond Souza, Branch Manager of the Kealia Store, resigned and turned his keys in on September 3, 1946. He made no attempt whatever to enter the store at Kealia. Sakai Kawamura, Lumberyard Foreman, resigned and turned his keys in on September 8, 1946. Joe Rapozo, Supervisor in charge of household appliances, has had the union call on him numerous times and is still fighting them off. Harry Yamaguchi, Acting Manager of Kealia Store, has had a great deal of trouble with mass picketing at his home, with threats consisting of people not trading at the store afterwards and being ostracized by camp people unless he joins. [120]

From the manner in which the picketing has been conducted at the store throughout the entire period since the strike commenced, it is my opinion that the striking employees under the direction of the union will continue to deny access to the store by myself, any other representatives of management, or any other persons from entering the store in the normal manner.

It is also my opinion that the conduct of the striking employees and the union were the direct cause of the resignation of supervisory personnel as set forth above.

Further affiant sayeth not.

/s/ L. T. CANNON.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [121]

PETITIONER'S EXHIBIT No. 9

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Alexander G. Hutton, being first duly sworn do depose and say as follows:

That I am employed as Department Manager of the Dry Goods, Shoes and Drug Departments of the Lihue Store, having been employed by said company about 20 years.

That at about 7:20 a.m. on September 16, 1946, I reported for work as usual. I drove my car into the entrance of the Lihue Store, that is, the one next to the office. As I entered this private driveway, I was stopped by about ten pickets who said that I could not go in to work. Another group of pickets were in front of my car and further down the driveway, and when I was stopped they waved their hands and arms and indicated I was to get off of the property. I then backed my car to the government road and reported to the main plantation office.

I believe that if I had attempted to force my way through the pickets that violence would have resulted.

Further affiant sayeth not.

/s/ ALEXANDER G. HUTTON.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [122]

PETITIONER'S EXHIBIT No. 10

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,

Territory of Hawaii—ss.

I, Harry Nogami, being first duly sworn do depose and say as follows:

That I am employed as Maintenance Foreman at the Lihue Plantation Store, of the Lihue Plantation Company, Limited, having been employed by said Company approximately seven or eight years.

That, as maintenance foreman it is my duty to do minor repair work and find out if chill rooms and freezers are working. I am also in charge of the store janitors, and night watchmen.

At the Lihue Store there are the following cold storage compartments: three freeze rooms, four chill rooms. The store also operates and controls what is known as the Army cold storage warehouse, located in Lihue, which has been taken over by the Lihue Store. This building has two large chill rooms and one large freeze room. In all of the above rooms we store and keep from spoiling large amounts of butter, poultry, beef, lamb and all types of other meats and dairy products.

At the Army warehouse it is my duty to defrost rooms and keep them at a required low temperature. I defrost the ice on the coils every day so that the food will not spoil. [123]

On September 16, 1946, at about 7:15 a.m. I reported for work and drove my truck into the Von Hamm Young entrance, which leads to the back of the store. As I entered this private road I was

stopped by about thirty to forty pickets. They said to me, "Go back home, we do not allow scabs to work." They told me to go home. I did not argue with them. After this I backed my truck to the main road and went home.

Again on September 16, 1946, at about 9:00 a.m. I again attempted to go to work. I drove my truck to the Bank of Hawaii entrance, which is a private road, and was again stopped by pickets who said, I could not go through. Other pickets were about

car /s/ H. C. W.

fifty feet in front of the ~~store~~. Knowing that I could not get in the store, I backed out and reported to Mr. Cannon, who is Assistance Manager of Lihue Store.

I know food will spoil if rooms are not defrosted. Further affiant sayeth not.

/s/ HARRY NOGAMI.

Line 10 Page 2 Corrected "car" corrected prior to acknowledgment.

/s/ H. C. W.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [124]

PETITIONER'S EXHIBIT No. 11

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,

Territory of Hawaii—ss.

I, Courtland E. Ashton, being first duly sworn do depose and say as follows:

That I am employed as Head Sugar Boiler, of the Lihue Plantation Company, Limited, having been employed by said company since March 1, 1945.

That, at about 11:00 a.m. on September 16, 1946, I drove to the Lihue Mill to inspect my department and to shut off the crystallizers.

I drove to the main mill yard entrance and found the private roadway leading to the mill yard blocked by about fifteen pickets. As I approached, the pickets formed a line, shoulder to shoulder across the road and barred my way. I was stopped and could not enter the mill. I asked Karemoto, one of the pickets, if I could enter the mill. He stated that I could not go through.

I backed away and proceeded to drive to the warehouse entrance to the mill yard and was again stopped by about ten pickets who formed a line across the road entrance.

I next drove to the side entrance to the mill yard and as I approached found a wire strung across the roadway with benches placed under the wire which formed a road block. The same Karemoto referred to above had rushed from the main entrance [125] to the side entrance and assisted the other pickets

in blocking the road so that I could not enter the mill yard or proceed to the mill.

Further affiant sayeth not.

/s/ COURTLAND E. ASHTON.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [126]

PETITIONER'S EXHIBIT No. 12

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, William A. H. Buddingh, being first duly sworn do depose and say as follows:

That I am employed as Chief Engineer of The Lihue Plantation Company, Limited, having been employed by said company since April 1, 1945.

That on September 16, 1946 at about 11:00 a.m., I drove my car to the south gate of the Lihue Mill with the intention of entering the mill to perform my duties required by my job. I left the government road and entered the mill premises and was

stopped by a solid line of between fifteen to twenty pickets. This line of pickets extended across the road way and they prevented me from entering the mill.

I then proceeded to what is known as the warehouse or back entrance to the mill and found upon my arrival that this entrance to the mill yard was also blocked by approximately ten pickets. They refused to allow me to enter.

I then drove to the north entrance to the mill yard and there also was stopped by a road block made up of wire strung across the roadway with wooden benches placed under the wire and was told by about ten pickets that I could not enter the mill.

I firmly believe that if I had attempted to cross the picket lines [127] that violence would have occurred.

Further affiant sayeth not.

/s/ WM. A. H. BUDDINGH.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [128]

PETITIONER'S EXHIBIT No. 13

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Ronald G. Watt, being first duly sworn do depose and say as follows:

That I am employed as Factory Superintendent, of The Lihue Plantation Company Limited, having been employed by said company since January 15, 1944.

That, on September 16, 1946 at 11:00 a.m., I followed Mr. Wm. A. H. Buddingh and Mr. Courtland E. Ashton to the main (south) entrance to the Lihue Mill.

Both Mr. Buddingh and Mr. Ashton who were driving separate cars directly in front of me, were stopped as they entered the private roadway to the mill by a line of about twenty pickets who barred entrance to the mill yard. A person by the name of Karimoto, a sugar loader at the mill, was heading up the picket line.

When it was apparent we could not enter, Buddingh, Ashton and myself drove our separate cars to the warehouse entrance of the mill yard where we were again stopped by a line of pickets of about ten in number. After being refused entrance to the mill yard by the pickets, I returned to the main plantation office.

To maintain my responsibilities and duties as Factory Superintendent it is imperative that I have access to the factory at all times.

At this time and since the morning of September 14, 1946 there have been no authorized persons on duty in the factory. There is at all times a [129] potential fire hazard because of bagasse storage in the fireroom. This material is subject to self ignition through spontaneous combustion.

There is considerable low grade massecuite stored in the crystallizers which are located in the mill and it is essential that this equipment be in operation as continuously as the electric power system allows, that is, they must be in operation during the off peak hours.

Due to the mass picketing of the mill yard it is impossible for supervisory employees to enter the mill and perform their essential duties.

Further affiant sayeth not.

/s/ RONALD G. WATT.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [130]

PETITIONER'S EXHIBIT No. 14

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,

Territory of Hawaii—ss.

I, John S. Carvalho, being first duly sworn do
depose and say as follows:

That I am employed as Assistant Shop Superin-
tendent, of The Lihue Plantation Company, Lim-
ited, having been employed by said company since

4 /s/ H. C. W.
192~~3~~.

That on Monday, September 9th, 1946, at about
ten minutes to six o'clock, a.m., I came out of my
house which is a plantation house located at the
Hanamaulu Shop Camp, and there was a gang of
about 50 to 60 men outside. In my yard, facing
me, was a sign "Down With Traitors." I passed
the sign, went up to the leading man which was
Daniel Ferriera, an employee of the company, and
asked him if he was an American. He said he was
trying to be one. I told him that I am an American
and I made two steps forward toward the shop, and
then turned back to him and told him that I have
a baby five months old and it was sleeping right
now, and that I did not like to have any noise made,
and in return he told me that they would not bother
the baby; then I started for the shop—he ordered
his men to follow me. I walked about 25 feet and
he threatened me with these words that "I dared
to do any work in the shop," then I went into the
shop they all followed and he was right in back of

me and as I got into the office door he called me "scab." They stood there at the shop for about 20 minutes making a racket, then he turned around and ordered his men to my house. He also ordered a few boys to go and get guitars and a banjo and they played music and made a lot of noise purposely to bother the baby after I had asked him not to interfere with the baby, and he promised me that he would not. [131]

That while I was in the shop I began to worry about the baby so I called the police. In about eight minutes they were up at the house and the racket was still going on, they were there and they did not stop the racket. Mr. Burns called at the shop and Antone told Mr. Burns about the racket. In about ten minutes Mr. Burns was there to hear the racket. Then Antone called Father Maurice and told him what was going on at my place and he came up to the house, spoke to the boys for about five minutes and turned and came to the shop and spoke to me and Antone and he asked us a few questions. That is, if we were doing any work that is belonging to another man. I replied that the only work I was doing was that belonging to management. He left us and went back to the crowd and asked them if they were Americans—the way they were doing things was not democracy. After he spoke to them (the gang) to leave the place and stop making the noise because of the baby, they all left the place, but before they left my place they told the wife that they were coming back.

That the only reason I know that I was picked on was because I showed the truck operator how to use

the hose nozzle and faucet on the kerosene tank mounted on the truck. The kerosene to be delivered to the employees for fuel.

That the above is my statement of what happened at my place on September 9th, 1946.

That on Wednesday morning, September 11th, 1946, at about 6:30 a.m. to 7:00 a.m., a gang again picketed me at the Blacksmith Shop where I had gone to work. This gang was about thirty men. This gang stayed around about four hours then left.

That on Friday, September 13th, 1946, at about 8:00 a.m., some picketers, about fifteen in number, again appeared at the Blacksmith Shop, and were still there when I left about 8:30 a.m. When I came back to the shop at 2:00 p.m., [132] they were still there, and also when I left about 2:30 p.m.

Further affiant sayeth not.

/s/ JOHN S. CARVALHO.

Line 8 Page 1 Shld be "1924" Changed prior to acknowledgment.

/s/ H. C. W.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1948.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [133]

PETITIONER'S EXHIBIT No. 15

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Mary Soares, having first been duly sworn, do
depose and say as follows:

That I am the wife of Antone Soares, regular
Welder's foreman, at The Lihue Plantation Com-
pany mill. My husband has been an employee of
the Company since 1931.

That about 8:00 a.m. on Thursday, September 12,
1946, while my husband was at work and I was at
home with my two children, aged five years, and one
year, about twenty to twenty-five men came to the
front of the house and gradually came around to
the back, on the back road. Our house is a planta-
tion house located in the new camp in Lihue. All
roads around the house are plantation roads.

That these men shouted "Is this the scab's
house?" and others would answer "Yes, this is the
scab's house; a scab lives here." Then I came out
and they said "This is Mrs. Scab." When I emptied
the waste basket in the barrel alongside the road,
one of the men came up to me and said "To think
you live in a scab's house; if I were you I would
run away." Another said, "I would kill myself."
My little girl was playing in the yard and the men
kept calling to her, "Your daddy is a scab." Then

one of the men came up on the road in front and shouted, "Yes, call him a scab," and then used profane words. I know this man by his appearance and his name is George Masaki, an employee of the company.

That about 9:00 a.m. to 9:30 a.m. my husband came home because, as he told me, he was worried about what was happening.

That about the same number of men stayed around all day. My little girl was quite shaken up by the noise and the yelling.

Further affiant sayeth not.

/s/ MARY SOARES.

Subscribed and sworn to before me this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [135]

PETITIONER'S EXHIBIT No. 16

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,

Territory of Hawaii—ss.

I, Georgina Rosa, having been first duly sworn,
do depose and say as follows:

That I am the wife of John F. Rosa, Mill Engineer at The Lihue Plantation Company, Limited, having worked for the company for over fifteen years.

That on Wednesday, September 11, 1946, at about 3:00 p.m., while my husband was at work and I was at home with my youngest child, aged two years, and my aunt who is visiting me, about one hundred and fifty men congregated around the front and back of my home, milling around and shouting. They would shout, "Why do you live in the same house with a scab?" "Have you no shame?" They told me "Stay in the house and don't come outside, you scab."

That their manner, shouting and their numbers, frightened me and my aunt and my child was also very frightened and afraid to go into the yard.

That every time I came out on the porch, some of the men would proceed to relieve themselves deliberately so that I might see them, while others would shout and point to the men relieving themselves.

I turned up the radio full blast so we would not be able to hear them, but even this did not drown out their shouting.

When my children came back from school, one boy, aged seven, and two girls, aged twelve and fifteen, the men would not move and my children had difficulty to open the gate to get in the yard. They were called scabs by the mob. They told my boy to tell my husband he was a scab.

About 3:30 p.m. one of the men threw a paper into our yard and I called the police and one policeman came down and picked up the paper, talked to the men—but I did not hear what he said. He did not disperse the strikers picketing our house. After he left the strikers shouted louder at me and using profane language.

Soon after this my husband came home. The men stayed around until about 4:00 p.m. They threatened to come back when they left.

Further affiant sayeth not.

/s/ GEORGINA ROSA.

Subscribed and sworn to before me this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires, June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Judicial Circuit, Terri-
tory of Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [137]

PETITIONER'S EXHIBIT No. 17

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

We, Mr. and Mrs. Antone Camara, husband and wife, being first duly sworn, do depose and say as follows:

That the undersigned is employed as mill shift engineer, of The Lihue Plantation Company, Limited, having been employed by said company since 1933.

That the undersigned, Mrs. Antone Camara, is the wife of Antone Camara, an employee of The Lihue Plantation Company, Limited.

That we live in a plantation owned house located in Lihue on the main highway near the Lihue Theatre. We have two children $2\frac{1}{2}$ and 7 years of age.

That our house was picketed on September 10th and 11th, 1946, from 7:30 a.m., until about 4 p.m., each day. There were about 80 men in front of our house on the sidewalk, on our stone wall, and about 30 men on plantation road which is about 30 feet from the back of our house.

That I, Mrs. Camara, in doing my housework went in and out of the house, the pickets shouted each time "look at the scab's wife," "don't your conscience bother you?", and made other cat-calls.

That I, Mr. Camara, went to work at 6:00 p.m., and returned at about 6 a.m. and saw the pickets

as described above. Pickets called out to me and one said “come on you scab, why don’t you join us. Do you think by not joining us Mr. Burns will give you a fat raise?” Also, “don’t forget Tony, when this is over you will be thrown out.” And “don’t you know you are taking the work of us men here.”

That they also put a sign on my front gate which read “Occupant of This House is a Scab—Down With Scabs.”

Further affiants sayeth not.

/s/ MR. ANTONE CAMARA,

/s/ MRS. ANTONE CAMARA,

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Judicial Circuit, Terri-
tory of Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [139]

PETITIONER'S EXHIBIT No. 18

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Charles J. Fern, being first duly sworn, do
depose and say as follows:

That I am a resident of the County of Kauai,
Territory of Hawaii,

That on Saturday, September 14, 1946, at about
8:00 a.m., I went down to The Lihue Plantation
Company mill and there witnessed the large num-
bers of persons congregated at the mill entrances.
I estimated there were over two hundred persons,
milling around in the main driveway and surround-
ing Hale Cheatham's pickup truck, Hale Cheatham
being known to me as the Electrical Superintendent
of The Lihue Plantation Company, Limited, that
there was also a large group of strikers on the
bank at the edge of the driveway;

I saw the Chief of Police conferring with a group
composed of Yoshikazu Morimoto, Taku Akama,
William Paia, George Masaki, Jerry Matsuyama,
all known to me personally as active union members
of The International Longshoremen's and Ware-
housemen's Union, and there were other persons
present unknown to me.

The Chief of Police was explaining to the union
representatives mentioned above, that the strikers
and the union men by keeping people from going

in and out of the mill were doing what they had been told not to do at some previous time in a conference with the County Attorney. He, the Chief of Police, asked them to break it up and clear the road. [140]

Yoshikazu Morimoto stated that he would first have to make a phone call. The Chief of Police indicated to me that Morimoto was referring to a phone call to Honolulu.

The milling around and booing continued. Morimoto returned after approximately fifteen to twenty minutes and again conferred with the union group. They then began mobilizing the picketers, assigning so-called union police and lining up the strikers, to get them into a compact mass across the mill driveways.

At this time, Mr. Caleb Burns, The Lihue Plantation Co., Ltd., Manager, informed the Chief of Police, in my presence, that he was sending his supervisory employees home to avoid any trouble, and that when the police were ready to open it up, then he, Mr. Burns, would send his men back.

While the supervisors left, amidst much shouting and booing.

I saw Yoshikazu Morimoto, and asked him—"Is this the result of your Honolulu phone call? Your instructions are to hold the line?" Morimoto replied "Yes, we are going to hold the line."

Soon thereafter, I left to telephone. At that time the massing of the men was still continuing.

Further affiant sayeth not.

/s/ CHARLES J. FERN.

Subscribed and sworn to before me, this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Judicial Circuit, Terri-
tory of Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [141]

PETITIONER'S EXHIBIT No. 19

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, C. E. S. Burns, having been first duly sworn,
do depose and say as follows:

That I am employed as General Manger of The Lihue Plantation Company, Limited, having been employed by said company since August 1, 1933.

That on Saturday morning, September 14th, 1946, Mr. K. B. Tester called me by phone, about 7:00 a.m., and advised me that there were approximately 500 strikers gathered around the entrances of our factory, and that they had refused to permit any of our factory workers to enter the factory. These employees were of the supervisory force. He further stated that he had called the Chief of Police, E. Crowell, and that he was present but had not yet opened up an entrance for our employees through the large group of strikers. I arrived on the scene about ten minutes later, and entered the factory grounds by the back entrance, which was the shortest way for me to go, and drove slowly through the crowd of strikers, and got out of my car and asked Chief Crowell what he was going to do. He told me to "wait." A few minutes later I again approached Chief Crowell and again he said for me to "wait"; I did this several times. He in the meantime was in a huddle talking to the leaders of the union.

Thinking that it might be a good thing to have Mr. C. A. Rice, Chairman of the Police Commission, see this gathering, and further that undoubtedly he could give Chief Crowell verbal advice, I attempted to contact Mr. Rice over the phone but was unable to locate him. I then approached the Chief and advised him that I had been trying to get Mr. Rice by phone, but was unable to do so, and recommended that it [142] might be well for him to dispatch an officer to bring Mr. Rice so that he might have Mr. Rice's advice. I believe that Chief

Crowell dispatched an officer for this purpose. I then went to my office to phone to Honolulu and was notified by Mr. Paul H. Townsley, Office Manager, that Mr. Rice had just called at the Post Office and was undoubtedly at home. I called him and advised him of the situation and he immediately went down to see the Chief of Police. At this same time I advised Mr. A. McKeever, who is a member of the Police Commission, and he later went to the factory entrance and spoke to Chief Crowell.

I believe that it was after Mr. C. A. Rice had talked to Chief Crowell that I again approached the Chief and in the presence of Mr. K. B. Tester, asked him again to open up the road so that our employees might enter the factory. He again told me to "wait." A little later he approached me for the first time and in the presence of Mr. K. Tester, and Mr. R. Smith, advised me that the union officials were willing to permit the Manager, Assistant Manager, Mr. T. Watt and possibly Mr. R. Smith, to enter the factory, and asked whether that was satisfactory. I told the Chief that we were asking for the road to be opened so that anyone who had business in the factory could enter. I again told the Chief of Police that we wished the law to be enforced, and the road to be opened. He stated that if that were attempted there would be bloodshed, and my reply to that was that while we did not want bloodshed, that if he felt there would be I would recommend that he get a sufficient force of policemen on the scene so that this could not

occur. Following this I told our employees, who had been standing around since early morning, that they should go home and get their breakfast. Some of the boys had already had breakfast, but most of them left the scene. I also left for my home, but on thinking the situation over, when I was half way home I decided that it would be a wiser move to send all of our employees, who had gathered at the mill entrances, home and have them remain there until the road [143] entrances were legally opened. I returned and advised Chief of Police Crowell, in the presence of Mr. Charles Fern, I believe, of what I intended to do, stating that the purpose of so doing was to reduce the chance of violence—he approved of this action. I immediately spoke to Watt and the other men who were there and advised them to go home and remain away from the factory until the entrances were opened.

At approximately 12:45 p.m., on Saturday afternoon, September 14th, 1946, I drove by the main entrance to the factory and did not see many men in the picket line, and for that reason I backed up to the entrance where the policeman was on duty and asked him if the road had been officially opened. He stated that he did not know; but while I was backing up, and while I was talking to the policeman, a large group of men came out from under the trees and solidly blocked the entrances making it very evident that they were still refusing to let any of our employees enter the factory.

Later on in the afternoon Mr. Smith and I were advised that the strikers had barricaded all en-

trances to the factory. We went down to inspect it and found this to be true—they had strung string and wire across all entrances and some pickets were still there.

This morning, Monday, September 16th, 1946, at approximately 7:45 a.m., I drove down to the main entrance of the factory and saw that they were still maintaining their strong picket line. I stopped there and asked Policeman Joe Carvalho whether the entrance was open and he replied that they were still picketing the factory—which was very evident.

Further affiant sayeth not.

/s/ C. E. S. BURNS.

Subscribed and sworn to before me this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [145]

PETITIONER'S EXHIBIT NO. 20

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, John Travasso, being first duly sworn, do depose and say as follows:

That I am employed as camp policeman of The Lihue Plantation Company, Limited, having been employed since 1926.

That on September 14, 1946, I was the first man to get to the garage which is my station at the mill every morning; I arrived about 4:30 a.m. Then, after I was there a little while, Mr. Buddingh, Tony Camara and Norbert Penna came to the station and we were all together. Then James Langley joined us, and after this, Mr. Tester. When I first arrived, no one else was around. I am not quite sure, but I think it was about 5:00 or 4:45 a.m. when they started to picket the place. When they started to make this revolution, that is when Mr. Tester was about to start for Hanamaulu; they piled around his car. Then he stopped his car. Then Mr. Buddingh and the two other boys started to go into the mill. Then the crowd started to push, push, push and the three got only as far as the warehouse. Then came Mr. Watt and they didn't let him go in and piled up around his car and started to call him "scab," and "a dog with two legs," and "a dog is a scab with two legs." He stopped his car

and didn't make any move—only Mr. Langley and myself were left at the station—and they said: “You are the last ones now—we are going to get you”—and to Mr. Langley they said, “You are the last ones we will get today—you cannot go hana-wai today.” So Mr. Langley told me, “You had better go [146] home, John.” So I thought to myself, “No sense in staying here, because no one is going to get in the mill,” so I went to my car and they asked me if I was going to hana-wai, too—so I told them “I am not a Hana-wai luna, I am only a Camp Policeman, I don't bother with hana-wai,” and they told me, “Alright then, keep a-going.” They called all kinds of names and lots of things I don't remember, but they were very noisy, in fact, terrific, and made so much noise we could not understand what was going on. I left about 6:15 a.m.

Further affiant sayeth not.

/s/ JOHN TRAVASSO.

Subscribed and sworn to before me this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [147]

PETITIONER'S EXHIBIT No. 21

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Frank Barretto, being first duly sworn do depose and say as follows:

That I am employed as Mill Shift Engineer, of The Lihue Plantation Company, Limited, having been employed by said company since 1907.

That on September 14th, 1946, I reported for work at the mill about 6:15 a.m. When I arrived in my car the approach to the mill yard was blocked by 300 to 350 union pickets. The pickets blocked the mill road entrance and stood in a mass about 10 feet deep. Pickets were shouting and calling names—some of which were “scabs—traitors.” Messrs. H. Buddingh, R. Watt, H. Cheatham, K. Tester and A. Camara were present. I parked my car behind the other supervisor's cars which had been stopped. When I got out of my car the pickets started booing and calling again. They shouted “down with the scabs,” etc. Two police officers were there when I arrived and Chief Crowell and another policeman arrived later. Chief Crowell talked to the pickets, but I did not hear what he said. While I was there the police did not attempt to open the picket lines. I stayed until about 9:30 a.m., when Mr. R. Watt told us to go home.

That during the entire time I was there the pickets were massed in a group and I believe, because of their temper and anger together with their actions, that no one could have crossed the picket lines. In the picket group I recognized Ben Iida, Jr., Frank Gonsalves, Alex Carreira, and many others. [148]

Further affiant sayeth not.

/s/ FRANK BARRETTO.

Subscribed and sworn to before me this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [149]

PETITIONER'S EXHIBIT No. 22

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, Ira W. Newton, having been first duly sworn,
do depose and say as follows:

That I am employed as Assistant Mill Engineer
of The Lihue Plantation Company, Limited, having
been employed by said company since 1934.

I arrived for work at the entrance of the mill
yard at about 6:15 a.m. on September 14, 1946. I
drove into the main mill entrance in my car, but
was unable to enter the mill yard because the road-
way was blocked by pickets. I would say there
were between 350 and 500 of them. These pickets
were 4 to 7 deep in lines and were shouting as I
approached. I got out of my car which was stopped
about 15 feet from picket lines. Mr. Buddingh,
Mr. Watt, Mr. Cheatham, Mr. Tester, Mr. Rosa
and some other foremen were present. The pickets
shouted to me when I got out of the car, "Here
comes another scab foreman." Charles Morita, one
of the pickets, said, "Newton, you are a scab! Why
don't you start repairing the big lathe?" The
shouting and cat-calling continued from the pickets
until we were sent home at 9:00 a.m. by Tom Watt.
These pickets were on the plantation property from
the time I arrived until I left at about 9:00 a.m.

To the best of my knowledge, it would have been impossible to have [150] passed through the picket lines and enter the mill yard.

Further affiant sayeth not.

/s/ IRA W. NEWTON.

Subscribed and sworn to before me this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [151]

PETITIONER'S EXHIBIT No. 23

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

County of Kauai,
Territory of Hawaii—ss.

I, James P. Langley, being first duly sworn do
depose and say as follows:

That I am employed as Division Overseer, of
The Lihue Plantation Company, Limited, having
been employed by said company since 1931.

That at about 8:30 a.m., on September 2, 1946, Mr. Burns, plantation manager, stopped by my house and reported to me that water was running on the road below Lihue field 3A, I went up and investigated and found the gates meddled with and water not running into the reservoir properly but going into Field 3A. Water was all over the road—I adjusted the gates in the proper order.

On September 3rd, 1946, I told Joe Amaral, Section Overseer, that we should throw the overflow water from the mill in one of the big cane fields, Lihue 30A and Lihue 32B, rather than waste it. This was done and we were not interfered with in doing this on this day.

On September 4th, 1946, at sometime during the morning, Augustine Lomingkit, Irrigation Foreman, reported to me down by Lihue 30A that a car bearing four or five men, one of Japanese ancestry, and the others Filipino, had told him not to turn water in the field. Joe Amaral, Section Overseer, also reported to me that he had visitors at his house the previous night who had told him not to turn water in the field. Joe Amaral acted accordingly and he himself did not turn any more water. That same afternoon I reported these water activities to Mr. Burns, Mr. Tester, and Mr. R. Smith, our Director of Industrial Relations. I told them [152] at that time that water from the reservoir was now being thrown into Lihue 29.

On September 5th, 1946, in the morning, shortly after 6 a.m., I, myself, put a ditch board in Lihue 35-B, because the reservoir was overflowing and rather than have the water wasted, dumped it there.

Then along about 9:30 of that same morning H. Kagehiro, Irrigation Foreman, reported to me that the board had been taken out of there. Said he had seen a car stop there while he was on his horse some distance away but did not recognize the parties and did not actually see them take the board out. I checked it myself and true enough the board was gone. Reported these incidents to Mr. Burns and Mr. K. Tester, late in the afternoon at the office. That same day I met Gisao Tateishi, head of the East Kauai Water Company, a part of the plantation, along the Government road and he asked me if I realized the reservoir at Lihue 20 was so full of water. I said "yes." He said it would be better to keep it down in the event there was a storm, I said I would take care of it.

Through Augustine Lomingkit, Irrigation Foreman, I learned that Guillermo Espiritu had been at Lihue 20 reservoir for three days. Espiritu is a regular reservoir tender, but now on strike. I went to Joe Amaral's house at pau hana and asked him if he was aware of this. He said he had not reported it to me since the union was taking the time of Espiritu and did not think it necessary. I came upon this Guillermo Espiritu at about 3 p.m., at the reservoir and he told me that some women had driven by and asked if he knew that water was being put into the fields. He also told me that a union man from the mill had been by in the morning to check up as to a report that someone was throwing water into Lihue 35B.

On September 6, 1946, I met Mr. K. Tester in the afternoon at 1:30 p.m., and together we drove down to the Lihue 20 reservoir and I opened up the reservoir and put on a lock, then we drove down to Lihue 35B, where we put in a gate there and waited along the garbage road for about two hours to see if any one would come [153] along and disturb the gate. No one came, so we left there at 3:30 p.m.

On September 7th, 1946, when I came home, shortly after 7 a.m., for breakfast, after I got into the house, I saw in the front of my house approximately 20 to 30 men gathered there. After a bit I went out into the yard and they yelled "Langley Scab," "Go out and hanawai, go to the fields, come out." After an hour or so at home I drove on out, I drove down to the office and reported the incident to the office.

Sometime after lunch, about 1:30 p.m., I drove out of the yard of my home and as I drove down the hill noticed immediately a car following me, with John Leonard Costa, a Portuguese boy driving and two Filipinos in the car, all employees of the company and now on strike; the names of the others are unknown. I turned into the Post Office, went across to the office where Bunt Baldwin, Hanalei Division Overseer, was standing, and conversed with him ten minutes or so. When I drove into the Post Office this yellow striped car turned into the Post Office on the right side and stopped there. I said to Bunt "that bunch is following me." He wanted to know if I wanted to accompany him and I said I had already called Mr. Donald Seaton,

a retired plantation office worker, that I would pick him up so then I went across to the Post Office to see if there was any mail, and I picked up a newspaper and came back to my car. All the time the yellow car remained there. Then I backed up and drove out onto the highway and finally turned in by Seaton's yard. Mr. Seaton came to the door and I said "did you hear the news," "no," he said—well, I said, "our house has been picketed," then I went into his house and stayed and conversed for five or ten minutes. In the meantime I kept peering through the window and could see Costa's car parked beyond a nearby garage. Then Mr. Seaton and I drove out and we drove on up to my home. The yellow car followed us up and parked in front of my place while we were in there. I called Keith Tester about 2 p.m., and arranged to meet him at the office. Then I drove down and again the yellow car followed—we drove into the back of the office and the yellow car [154] stayed by the tennis courts then Mr. Seaton and I went into Mr. Tester's office where I related my story of being followed to Mr. K. Tester. Then we left and later turned in by Lihue 18—Keith Tester and Donald Seaton were to be in my car and Mr. Goodale Moir, of American Factors, Limited, in Honolulu, was to follow the yellow car. As we drove down past Kress & Company, the yellow car kept a good distance behind us. Then we turned into Lihue 18, on the plantation road, and when we got in and saw that the yellow car was following us, Keith Tester said to

stop my car by the last pole before hitting the railroad crossing. Costa's car had already stopped within the plantation road with Mr. Moir behind him, so Mr. Tester told me to back up—which I did. He said you stay in the car while I get out and question. Seaton stayed with me, and later he got out. After questioning by Mr. Tester, which I did not hear, Tester went back to phone the police. They arrived: Capt. Fernandez and Ferreira. Keith Tester came along with them. Then I got out of my car and walked past the yellow car where the two Filipinos and Costa were sitting. Then we drove ahead to give Costa a chance to turn around and go back with the police. We did not hear what was done about this.

Then Tester and Seaton with me drove on down toward Lihue 32B. Tester said I might as well take the gates out so that I won't be bothered tomorrow, going out into the fields, being Sunday. I took the water gate out of 32B Lihue, then we drove to Lihue 35B where Keith Tester took out a gate, and finally a gate was taken out of Lihue 29.

All of the above indicates to me that any effort on my part or on the part of any other person to open gates or otherwise attempt to irrigate would be interfered with and all efforts made by the union and the strikers to prevent such; that any attempts to do this work would be at the risk of further picketing of homes including my own and those of others connected with such work, trailing of [155] employees, with possible threats and annoyance.

Any serious effort of systematic irrigation would be completely prevented by the union and the strikers, in my estimation.

Further affiant sayeth not.

/s/ JAMES P. LANGLEY.

Subscribed and sworn to before me, this 15th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept., 17, 1946. [156]

PETITIONER'S EXHIBIT No. 24

Lihue, Kauai

January 14, 1946

Lihue Plantation Co., Ltd.

Lihue, Kauai

Gentlemen:

Will you please recognize the following 1946 officers of Local 149 Unit 1:

President, Joseph Nunes; 1st Vice-President, Daniel F. Rapozo; 2nd Vice-President, Fernando Fontanilla; Recording Secretary, Tom Takemoto; Financial Secretary, Sunao Iwamoto; Sergeant-at-Arms, Peter Contrades, Daniel Ferreira, Ignacio Mercado; Trustees, Santos Barbasa, Shoichi Iwasaki, Charlie Sasaki.

Yours very truly,

ILWU LOCAL 149,

/s/ Y. MORIMOTO,

Business Agent.

YM:k

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 17, 1946. [157]

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

At Chambers In Equity

In Open Court, Tuesday, September 17, 1946

Court Convened at 10:10 A.M.

Present: Honorable Philip L. Rice,

Judge Presiding;

Kenichi Umemoto, Court Reporter;

John Ilalaole, Jr., Courtroom Clerk.

Equity No. 120

THE LIHUE PLANTATION COMPANY,

LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO),
LOCAL 149 OF THE INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSE-
MEN'S UNION (CIO), UNIT 1, LOCAL 149,
OF THE INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION
(CIO), JOSEPH NUNES, DANIEL
RAPOZO, FERNANDO FONTANILLA,
THOMAS TAKEMOTO, SUNAO IWA-
MOTO, WILLIAM PAIA, YOSHIKAZU
MORIMOTO, BENJAMIN IIDA, GEORGE
MASAKI, CHARLES MORITA, RONALD
TOYOFUKU, TAKU AKAMA, JOHN DOE,
et al.,

Respondents.

HEARING ON PETITION FOR
INJUNCTION

Appearances:

Ernest C. Moore, Jr., Esq., of Vitousek, Pratt &
Winn, attorneys for petitioner.

Abraham G. Kaulukou, County Attorney, County of Kauai, T. H., *amicus curiae*.

As the walls of the courtroom of this court were being soundproofed and the courtroom therefore not being available, the hearing on the petition for injunction and for the issuance of an order to show cause was had in open court in the jury-room of this court.

The Court stated that the Court had advised Mr. E. Moore, representing Vitousek, Pratt & Winn, attorneys for petitioner, that the Court desired preliminary argument on the law of the case, to wit, the question of jurisdiction of the Court.

The Court also raised the question, for the purpose of argument, of whether a manager, not being an officer of a corporation, might legally proceed in such matter without specific authorization by the Board of Directors, the Court having noted that the petition was signed by C. E. S. Burns, manager of the Lihue Plantation Company, Limited. Mr. Moore stated that they assumed, in view of the urgency of the matter coming up, and the fact that Mr. Burns is manager on this island and the main offices being in Honolulu, that that would be sufficient for the purpose, but that if the Court required further authorization he could obtain that immediately.

The Court further stated that there is no allegation in the petition that the Police Department of the County of Kauai was unwilling or unable to act and, in the light of decisions of the United States Supreme and Circuit Courts, the Court [158] questioned the right to issue an injunction where there

is a labor dispute and there is no showing that the executive department of the government—in this instance the police department—is unable or unwilling to act. The Court also raised the question as to whether our Territorial courts are courts of the United States, and particularly whether a circuit judge who holds his commission by virtue of appointment by the President of the United States with the consent of the Senate of the United States and who receives his salary from federal funds, is, when acting as the circuit judge, a court of the United States within the meaning and intent of the Norris-LaGuardia Act.

The Court also raised the question as to whether the National Labor Relations Act ousts the circuit courts or any state court of jurisdiction in matters which arise out of labor relations covered by the National Labor Relations Act.

Mr. Moore presented argument upon the questions raised by the Court. In this connection he gave the following citations and authorities:

83 L. Ed. 189 (1938);

4 Enc. U. S. Supreme Court Reports, p. 885;
1154 A;

Constitution of the United States Annotated,
p. 444;

141 U. S. 174; 35 L. Ed. 693;

Allen v. Myers, 1 Alaska 114 (1901);

48 U. S. C. A. 1018, p. 13;

123 A. L. R., p. 656;

14 N. E. (2d) 991;

306 U. S. 642;

Teller Labor Disputes and Collective Bargaining, Vol. 1, Secs. 124 & 125;
257 U. S. 184;
159 Fed. 500;
115 Pac. (2d) 553;
29 Atl. (2d) 183;
28 N. Y. Supp. (2d) 303 (1941);
27 N. Y. Supp. (2d) 718;
5 N. Y. Supp. (2d) 575;
124 A. L. R. 744;
179 Miss. 3551; 229 N. W. 311;
265 N. W. 302;
285 N. W. 903;
46 Atl. (2d) 16;
22 N. E. (2d) 120.

Mr. Moore further stated that he would present oral testimony to the effect that in various instances the police authorities had been called, but no effective action had been taken by them.

The Court then proceeded with the hearing of evidence in support of the petition.

Counsel then presented affidavits of various individuals and the Court received same in evidence and ordered same marked as petitioner's exhibits as follows:

- No. 1—Affidavit of Ronald G. Watt.
- No. 2—Affidavit of Keith B. Tester.
- No. 3—Affidavit of Antone Camara.
- No. 4—Affidavit of Hale C. Cheatham.
- No. 5—Affidavit of Wm. A. H. Buddingh.
- No. 6—Affidavit of Norbert Penna.

- No. 7—Affidavit of Courtland E. Ashton.
- No. 8—Affidavit of Leonard T. Cannon.
- No. 9—Affidavit of Alexander G. Hutton.
- No. 10—Affidavit of Harry Nogami.
- No. 11—Affidavit of Courtland E. Ashton.
- No. 12—Affidavit of William A. H. Buddingh.
- No. 13—Affidavit of Ronald G. Watt.
- No. 14—Affidavit of John S. Carvalho.
- No. 15—Affidavit of Mary Soares.
- No. 16—Affidavit of Georgina Rosa.
- No. 17—Affidavit of Mr. & Mrs. Antone
Camara.
- No. 18—Affidavit of Mr. Charles J. Fern.
- No. 19—Affidavit of C. E. S. Burns.
- No. 20—Affidavit of John Travasso.
- No. 21—Affidavit of Frank Barretto.
- No. 22—Affidavit of Ira W. Newton.
- No. 23—Affidavit of James P. Langley.

The Court took notice of a motion for temporary restraining order attached to the file in this matter and inquired of Mr. Moore whether he intended filing it. Mr. Moore stated that he did and that it was based upon the issuance of the order to [159] show cause. The Court stated that the evidence might be considered in both matters and that the Court would like to have the testimony of some of the affiants as to the essential facts on which Mr. Moore relied for injunctive relief.

Court recessed at 11:15 a.m. and reconvened at 11:35 a.m.

Counsel for petitioner was present in court.

Mr. C. E. S. Burns, having been called and duly sworn, testified in substance as follows: That he resides in Lihue, Kauai; that he is the general manager of the Lihue Plantation Co., Ltd., petitioner herein; that the plantation employees have been on strike since September 1, 1946; that at approximately 7 o'clock on the morning of the 14th of September, Mr. Tester called him by phone and told him that there was a mob of strikers surrounding the entrance of the mill and that they were refusing to let the supervisory force to enter the factory; that he immediately proceeded to the mill; that he entered the mill through the back entrance through a crowd of pickets; that he approached the Chief of Police, Edwin Crowell, and asked him what he intended to do; that the chief told him to wait; that the chief talked with a group of strikers; that he approached the chief several times and each time the chief told him to wait; that the chief finally told him that the union leaders would permit only the manager, the assistant manager, Mr. Watt and possibly Rockwell Smith to enter the mill; that he again requested that the entrances to the mill be cleared; that he viewed the situation as hopeless for the time being and told his employees to return to their homes until further notice; that upon his request Mr. Charles Rice, chairman of the police commission of Kauai and Mr. A. McKeever, member of the police commission of Kauai, came over to view the situation.

Mr. Burns further testified that he has valuable equipment in the mill, including utility equipment;

that the two hydro power stations situated in the mountains supply the current to Lihue when the mill is not operating; that for several days the load on the power lines was just about what the hydro stations could supply; that if that load is more than the power produced by the hydro stations, then it has been customary for Mr. Cheatham to cut off some of the lines; that the only way to do that is through the switch board in the mill; that Mr. Cheatham was not allowed to enter the mill to do this; that the hydro plants supply the electrical current for the community of Lihue.

Upon further questioning witness further testified that the attitude of the strikers on September 14, 1946, was very boisterous; that when he approached the strikers with his car, they were reluctant to move out of the way and yelled at him; that he was shouldered once when walking through the line; that on September 17, 1946, there was a large group of strikers around the office building of the company; that after inquiry in the office a number of employees were not present; that the employees later phoned that they had not been permitted to enter the office; that no one was permitted to enter the mill; that the three entrances to the mill were blocked; that he had to force his way through the picket lines with his car; that the strikers were all on plantation property; that he feels that the law is not being enforced; that he thinks it will be worse as soon as the mob learns that the police will not enforce the law; that the pickets were not invited there.

Mr. C. E. Ashton, having been called and duly sworn, testified in substance as follows: that he resides in Lihue, Kauai; that he is the head sugar boiler engineer for The Lihue Plantation Co., Ltd.; that the employees of the firm have been on strike since September 1, 1946; that on September 14, 1946, on his way to work he found the entrance to the mill jammed with strikers; that he was not permitted entry into the mill; that the mob was yelling; that he asked the police what they intended to do and they said that they had to wait until the chief arrived; that he saw no one gain entrance to the mill; that from the attitude of the mob it was quite apparent they would not let anyone into the mill; that he tried to go to work on September 16, 1946, but the entrances were still blocked by strikers; that the strikers were on plantation property.

Mrs. Mary Soares, having been called and duly sworn, testified in substance as follows: that she resides in Lihue, Kauai, on plantation land; that she is married; that her husband is a welding foreman of the Lihue Plantation Co., Ltd.; that she has two children, aged 5 and 1; that her husband does not belong to the union; that [160] at present he is not working; that her husband was approached by union members to join the union; that on Thursday, September 12, 1946, at about 8 o'clock in the morning, about 25 union men came up to her house and began yelling "Is this a scab's house"; that they hung around most of the day yelling; that they yelled at her little daughter that her father was a scab; that the road they were on belonged to the plantation.

Court at this time reminded counsel that none of the respondents had been identified by name as yet.

Upon further questioning by counsel, witness herein testified that one of the group that was around her house was George Masaki, member of the union; that the others were also members of the union.

Mrs. Georgina Rosa, having been called and duly sworn, testified in substance as follows: that she resides in Lihue, Kauai, on plantation property; that she is a housewife; that her husband works in the mill as mill engineer of The Lihue Plantation Co., Ltd.; that her husband is not a member of the union, although he was approached to join the union; that on September 11, 1946, a group of union men approached her home and began yelling from the street, "Hey, you scab!"; that they relieved themselves by her home; that she was frightened for her aunt's and baby's sake; that her aunt from Honolulu was just trembling; that her other children coming home from school had to squeeze their way through the pickets to open the gate into the yard; that someone threw some paper into her yard; that she called the police who merely came, picked up the paper, talked to the strikers and went away; that they called me all kinds of names; that there were about 100 of them.

Mr. William A. H. Buddingh, having been duly called and sworn, testified in substance as follows: that he resides in Lihue, Kauai; that he is employed as chief engineer of the mill by The Lihue Plantation Co., Ltd.; that early Saturday morning, Sep-

tember 14, 1946, at about 4 o'clock, he went to the mill; that at that time there were no pickets around; that he went over to the garage to talk to Mr. Travasso; that the pickets began coming in and forming a line soon after that; that they barred him from entering the mill again; that the pickets were on plantation property; that he saw Y. Morimoto, George Masaki and William Paia, representatives of the union, at the picket line; that he again attempted to get into the mill on September 16, 1946, and was stopped; that Morimoto and the other pickets refused to allow him to pass the picket line.

Mr. James P. Langley, having been called and duly sworn, testified in substance as follows; that he resides in Lihue, Kauai; that he is employed by The Lihue Palantation Co., Ltd., as division overseer; that the employees of the plantation are on strike at present and have been on strike since September 1, 1946; that on September 2, 1946, he was informed by Mr. Burns, manager of The Lihue Plantation Co., Ltd., that water was overflowing below one of the fields under his care; that he found the water gates had been tampered with; that he did not see the tampering of the water gates; that his home was picketed on September 7, 1946; that they yelled at him "Langley, you scab"; that they followed him in a car all afternoon; that one of the occupants of the car was John L. Costa, a union member; that he reported the incident to Mr. Tester; that none of his men are working at present; that he feels that the pickets will continue such attempts to interfere with his work.

Mr. Leonard T. Cannon, having been called and duly sworn, testified in substance as follows: that he is a resident of Lihue, Kauai; that he is the assistant manager of the Lihue Store of the Lihue Plantation Co., Ltd.; that the employees are at present on strike; that the store is operating in a very limited way; that 4 restaurants and 2 hospitals only are served; that pickets are preventing the store from being opened; that the union allowed only three people to enter the store, namely Mr. K. Fujii, Mr. W. Albao and himself; that the following people were prevented from entering the store: Mr. U. Ishii, Mr. Sandy Hutton, Mr. H. Nogami, and Mr. Joe Rapozo; that he saw the men stopped; that Mr. Nogami is the maintenance man for the refrigeration plant in the store; that a lot of perishable food will be spoiled if he is not let in to repair the plant.

Mr. Keith B. Tester, having been called and duly sworn, testified in substance as follows: that he resides in Lihue, Kauai; that he is the assistant manager of The Lihue Plantation Co., Ltd.; that at present the employees of the firm are on strike; that the union the employees belong to is known as the I.L.W.U. Local 149, Units 1, 2, and 3, that the union members have not been permitting employees to enter the mill; that on September 14, 1946, he saw the following union representatives [161] in the picket lines near the mill: Mr. George Masaki, Mr. Ronald Toyofuku, Mr. T. Akama, Mr. Y. Morimoto, and Mr. William Paia; that he knew them to be

representatives of the union for he had had dealings with them; that he was the one that called the police on September 14, 1946; that he saw Mr. Burns talking with the chief of police and going over to talk with the chief several times; that he overheard Mr. Burns tell the chief to open up the road; that the chief told Mr. Burns to wait; that Mr. Burns requested the chief to open up the road to everyone; that the chief replied that the union would not open up to everyone, but would allow Mr. Burns, himself, Tom Watt and Rockwell Smith to enter the mill; that the roads are still closed by the union.

Upon further questioning witness testified that the power lines of the two hydro plants are tied up in the mill and that it is absolutely essential that they be looked after; that Mr. Ashton ordinarily looks after the crystallizers.

Mr. Charles J. Fern, having been called and duly sworn, testified in substance as follows: that he resides in Lihue, Kauai; that he was in the vicinity of the Lihue Sugar Plantation Co., Ltd., mill on the 14th day of September 1946; that he witnessed the mass picketing there; that he saw Mr. W. Paia, Mr. Y. Morimoto, Mr. G. Masaki, and Mr. T. Akema, and Matsushima, union members present at the picket lines; that he saw the chief of police conferring with the union representatives; that he overheard the chief tell the union officials to clear the road; that the union officials were waiting the outcome of a phone call to Honolulu by Mr. Morimoto; that the County Attorney had a conference

with the chief of police and told the chief that he couldn't do anything unless someone 'slugged' somebody; that some of the pickets had arm bands on; that when Mr. Morimoto returned from the phone call to Honolulu the picket lines began to mass in front of the entrances; that he asked Morimoto whether he had been instructed to hold the line and the latter replied in the affirmative.

At this time the County Attorney, Mr. A. G. Kaulukou, who had offered to act as *amicus curiae* requested that he be allowed to ask Mr. Fern a few questions. The Court allowed him to do so.

Upon questioning by Mr. A. G. Kaulukou, the witness testified that he did not actually hear Mr. Kaulukou, the County Attorney, use the word 'slugged' when speaking to the chief of police, but that the impression he got out of the County Attorney's advice to the chief of police was that the latter could take no action unless there was an overt act.

Court recessed at 1:25 p.m. and reconvened at 3:03 p.m.

Counsel for petitioner was present in court.

Mr. Keith B. Tester was recalled as a witness for petitioner and testified in substance as follows:

Mr. Tester was handed a document which he identified to be a letter from Y. Morimoto, Business Agent of Local 149, I.S.W.U., to The Lihue Plantation Co., Ltd., listing the names of officers of Local 149, Unit 1, I.L.W.U., for 1946, dated January 14,

1946, which petitioner introduced and the Court accepted in evidence and ordered marked as Petitioner's Exhibit "24."

The Court found that the petitioner had made a *prima facie* showing that the respondents had exceeded the bounds of peaceful picketing, in that they had prevented the employer, through its supervisory employees and the general manager from entering at will the sugar factory of the petitioner; also, that they had prevented free access to the general merchandise store known as Lihue Store and in effect had taken possession and control of both the factory and the store; and that they had also been guilty of mass picketing and the use of intimidation.

The Court also found this case similar to the case of *Westinghouse Electric Corporation v. United Electrical, Radio & Machine Workers of America (CIO) Local 601 et al*, as set forth in the opinion of the Supreme Court of Pennsylvania, recorded in the advance sheets of *Atlantic Reporter*, 2d Series, the citation being 46 A 2d No. 1, at page 16 et seq.

The Court felt that the petitioner herein had shown satisfactory *prima facie* evidence of irreparable damage, not because of any destruction of or injury to its plant, but because of the interruption of vital activities necessary by way of preparation for future business and production; and that, on the instance of the Lihue Store refrigerating plants, it had shown *prima facie* evidence that serious loss might be sustained and if not enjoined might con-

tinue, the amount of which could not be determined at present and could not be taken care of by compensatory damages.

To that extent the Court made the finding that there had been a sufficient showing preliminary to the issuance of an order to show cause, as prayed for in the petition for injunction herein.

Mr. Moore presented a draft of an order to show cause and the Court ordered that same be made returnable on Friday, September 27, 1946, at 9 o'clock a.m. Mr. Moore stated that he desired to file a motion for the issuance of a restraining order and also presented for consideration by the Court a proposed temporary restraining order.

Court adjourned at 3:17 o'clock p.m.

By Order of the Court:

/s/ JOHN ILALAOLE,

Courtroom Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.



In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

MOTION FOR TEMPORARY RESTRAINING
ORDER

Filed at 3:20 o'clock p.m., September 17, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth.

Vitousek, Pratt & Winn, 404 Alexander & Baldwin Bldg., Honolulu, T. H., Attorneys for Petitioner. [164]

To the Honorable Philip Rice, Judge of the above-entitled Court, presiding at Chambers in Equity:

Comes now The Lihue Plantation Company, Limited, and respectfully shows as follows:

I.

That the Lihue Plantation Company, Limited, has this date filed in the above-entitled Court a petition in the above-entitled proceeding against the

International [165] Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilia, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al, and petitioning this Honorable Court for an order to issue of and under the seal of this Court directed to said Respondents ordering them to appear ten days from the date of filing of this petition in the above-entitled proceeding and then and there to show cause, if any they have, why the said injunction therein prayed for should not be entered and issued;

II.

That this Honorable Court has this date issued said orders directed to said Respondents as prayed for in the above-entitled proceeding;

III.

That pending a hearing on the Order to Show Cause in the above-entitled proceeding, the Petitioner believes upon its information and belief, that the acts specified in the petition filed in the above-entitled proceeding having been committed by the Respondents therein and now continuing, will continue unless restrained pending a final hearing on the Order to Show Cause issued in the above-entitled proceeding; [166]

IV.

That the commission of said acts as specified in the above-entitled proceeding, will, unless restrained pending a final hearing in said proceeding, cause substantial and irreparable injury to the Petitioner's property;

V.

That the Petitioner has no adequate remedy at law;

VI.

That, in support of this motion for a Temporary Restraining Order, the said Petitioner is prepared to submit to the Court supporting affidavits if the Court so desires.

Wherefore, the Petitioner in the above-entitled proceeding, respectfully moves as follows:

(1) That a temporary restraining order issue out of and under the seal of this Honorable Court restraining and enjoining the Respondents and each of them as set forth in the above-entitled proceeding from in any way committing any of the acts therein specified and in accordance with the prayer for relief of Petitioner as set forth in the Petition filed in the above-entitled proceeding, pending a final hearing and order in said proceeding.

Dated: Lihue, Kauai, T. H., 16th September, 1946.

/s/ C. E. S. BURNS.

Territory of Hawaii,
County of Kauai—ss.

C. E. S. Burns, being first duly sworn, on oath deposes and says, That he is Manager of The Lihue Plantation Company, Limited, the Petitioner named herein; that he has read the foregoing petition, knows the contents thereof and that the allegations contained herein are true and correct, except the allegations made on the information and belief and as to those he believes them to be true.

/s/ C. E. S. BURNS.

Subscribed and sworn to before me this 16th day of Sept., 1946.

[Seal] /s/ HENRY C. WEDEMEYER,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [168]

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED, Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc., Respondents.

ORDER TO SHOW CAUSE

Filed at 3:35 o'clock p.m., September 17, 1946.

/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

Vitousek, Pratt & Winn, Alexander & Baldwin
Bldg., Honolulu, T. H., Attorneys for Petitioner.

The Territory of Hawaii to: International Long-
shoremen's and Warehousemen's Union (CIO);
Local 149 of the International Longshoremen's
and Warehousemen's Union (CIO), Unit 1,
Local 149, of the International Longshoremen's
and Warehousemen's Union (CIO), Joseph
Nunes, Daniel Rapozo, Fernando Fontanilla,
Thomas Takemoto, Sunao Iwamoto, William
Paia, Yoshikazu Morimoto, Benjamin Iida,
George Masaki, Charles Morita, Ronald Toyo-
fuku, Taku Akama, John Doe, Mary Doe, Rich-
ard Roe, et al, Greetings:

Whereas, The Lihue Plantation Company, Lim-
ited, has filed in the above-entitled Court a peti-
tion against you, praying that a temporary order

issue from and under the seal of this Court restraining and enjoining you as to the matters therein set forth,

Now Therefore, you the said International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), [170] Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Take moto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al, are hereby ordered to appear before the Judge of the Circuit Court, Fifth Judicial Circuit, Territory of Hawaii, presiding at chambers in equity, at his Courtroom in Lihue, County of Kauai, Territory of Hawaii, on Friday, the 27th day of September, 1946, at the hour of 9 o'clock a.m., to show cause, if any you have, why the injunction prayed for in said petition should not be issued.

Dated: Lihue, Kauai, T. H., September 17th, 1946.

[Seal] /s/ PHILIP L. RICE,
Judge, Circuit Court, Fifth Judicial Circuit, Ter-
ritory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [171]

In the Circuit Court of the Fifth Judicial Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents,

TEMPORARY RESTRAINING ORDER

Territory of Hawaii to the International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al, Greetings:

Whereas, The Lihue Plantation Company, Limited, has filed herein a petition against you praying to be relieved touching the matters therein set forth; and

Whereas, an order to show cause issued from and under the seal of this Court ordering you to appear before the undersigned, Judge of the above-entitled Court, on Friday, the 27th day of September, 1946, at the hour of 9 o'clock a.m., and

Filed at 3:50 o'clock p.m., September 17, 1946.

/s/ SAMUEL H. KIMURA,
File Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii. [172]

Whereas, by supporting affidavits adduced by the Petitioner at the time of the filing of the petition in the above-entitled proceeding it appeared that the acts therein specified and complained of will continue unless restrained pending a hearing on the petition in the above-entitled proceedings:

Now Therefore, pursuant to the prayer of said Petition you, International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al, are hereby restrained and enjoined until the further order of this Court from in any way

(a) Interfering with the ingress and egress from the Petitioner's mill, store or other plantation buildings, and premises located in the

County of Kauai, Territory of Hawaii, by the Petitioner, its employees, or any others who may enter said premises for the purpose of performing work or for other lawful occasion;

(b) Threatening violence or using coercion or intimidation by force of numbers or otherwise, or other unlawful means upon the employees of the Petitioner or those seeking employment with the Petitioner, or others lawfully entering upon the Petitioner's premises or proceeding to or from said premises;

(c) Coercing or intimidating employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety and welfare of [173] any of the Petitioner's employees families or those seeking employment with the Petitioner; or coercing or intimidating the families of the Petitioner's employees;

(d) Visiting the homes of the Petitioner's employees or persons seeking employment with the Petitioner or approaching, following or trailing any of said persons at any place whatsoever in an offensive, disorderly, threatening or intimidating manner, or in such a manner as to provoke a breach of the peace;

(e) Picketing the homes of the Petitioner's employees or persons seeking employment with the Petitioner;

(f) Making, uttering or circulating any false, deceitful or untrue statements with reference to the Petitioner, its employment prac-

tices, and its employees working therein, or others seeking to work therein;

(g) Mass picketing or other congregating in crowds on or near the premises of the Petitioner;

And in Furtherance Hereof, You are hereby ordered to limit the number of pickets which you shall use to not more than three (3) pickets stationed at points of ingress and egress to the Petitioner's property, exclusive of the homes occupied by Petitioner's employees, said pickets being hereby enjoined from picketing other than in a peaceful and lawful manner and without interfering with the Petitioner, its employees, or any other persons lawfully seeking to enter or leave the Petitioner's premises; said pickets being also enjoined from otherwise committing any of the acts hereinabove specified. Any persons engaging in picketing to the extent authorized above shall wear armbands reading "Authorized Picket."

Dated: Lihue, Kauai, T. H., September 17th, 1946.

[Seal] /s/ PHILIP L. RICE,

Judge of the Above-Entitled
Court.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,

Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

At Chambers

Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

CHAMBERS SUMMONS

The Territory of Hawaii: To the High Sheriff of the Territory of Hawaii, or his Deputy; the Sheriff of any County of the Territory of Hawaii, or his Deputy; or any Police Officer in the Territory of Hawaii:

You are commanded to summon International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149, of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Take-moto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, Respondents, to appear ten days after service hereof, if they

reside on the Island of Kauai, otherwise twenty days after service, before the Judge of the Circuit Court of the Fifth Circuit sitting at Chambers in the Court Room at Lihue, County of Kauai, to answer the annexed petition of The Lihue Plantation Company, Limited, Petitioner. [176]

And you are further commanded, by order of Hon. Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit to also serve upon each of them, the aforesaid respondents, a certified copy of the Order to Show Cause and a certified copy of the Temporary Restraining Order entered and issued in the above entitled matter.

And have you then and there this Writ with full return of your proceedings thereon.

Witness the Judge of the Circuit Court of the Fifth Circuit, at Lihue, Kauai, T. H., this 17th day of September, 1946.

[Seal] /s/ KENICHI UMEMOTO,
Chief Clerk.

2394 R. L. of 1925. The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day be Sunday or legal holiday, it shall be excluded.

I hereby certify that the foregoing is a full, and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit Territory of
Hawaii

Served the within Summons on.....therein
named as defendant by handing him personally a
certified copy thereof and at the same time showing
him the original, at.....this.....day of.....
19..

.....

Deputy Sheriff.

(or, if defendant is a corporation)

Served the within Summons on.....a corpora-
tion by handing to.....its.....a true and at-
tested copy thereof at.....this.....day of.....
19..

.....

Deputy Sheriff.

Circuit Court Fifth Circuit.....vs.....Cham-
bers Summons.

Issued at 6:35 o'clock p.m., September 17, 1946.

/s/ SAMUEL H. KIMURA

File Clerk.

Returned at.....o'clock..m.,.....19.....,
Clerk.

.....Service.....@ \$1.00 each, \$......

.....Cop.....@ \$1.50 each, \$......

Expense\$......

Total\$.....

Circuit Court of the Fifth Circuit
Territory of Hawaii
Lihue, Kauai

Chambers of Philip L. Rice, Judge

Telegram received at 1:28 p.m. of date thereof.
(Received over telephone from wireless office.)

From Honolulu, Sept. 20, 1946.

Honorable Judge Philip Rice
Judge Fifth Circuit Court
Lihue

Have consulted with justices of supreme court as you requested and am pleased report unanimous agreement you may properly in your discretion permit Mr. Gladstein represent clients in specific cases without local associate counsel being present or irrespective of such association and they recommend he be extended all courtesies.

C. NILS TAVARES,
Attorney General of Hawaii.

Copy to Mr. Richard Gladstein.

Copy to County Attorney, County of Kauai.

/s/ PHILIP L. RICE,
Judge.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii. [179]

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

At Chambers—In Equity

In Open Court, Friday, September 20, 1946
Court Convened at 6:05 P.M.

Present: Honorable Philip L. Rice, Judge Presiding; Kenichi Umemoto, Court Reporter; John Ilalaole, Jr., Courtroom Clerk.

Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

HEARING ON ORAL MOTION

Appearances:

Montgomery E. Winn, Esq., and Ernest C. Moore, Jr., Esq., of Vitousek, Pratt & Winn, attorneys for petitioner; Richard Gladstein, Esq., attorney for respondents; Dudley C. Lewis, Esq., Deputy Attorney General, T. H., amicus curiae.

The Court stated that the Court was pleased to recognize Mr. Richard Gladstein, a member of the Bar of California, who desired to appear specially in this case.

The Court explained that in view of the fact that Rule 15 of the Supreme Court of the Territory of Hawaii purports to require that a foreign attorney, that is, an attorney from another jurisdiction, may appear specially in a case only as an associate with another attorney, the Judge had telephoned to the Attorney General and requested the latter to take the matter up with the Supreme Court and obtain its construction of that rule, and that the Court was pleased to say that the Justices of the Supreme Court had unanimously approved authorization for Mr. Gladstein to appear.

Mr. Gladstein stated that he was appearing on behalf of all the respondents in this matter.

Mr. Dudley C. Lewis entered his appearance as *amicus curiae* and the Court ordered that such appearance be noted.

The Court also noted that Messrs. Winn and Moore, of the firm of Vitousek, Pratt & Winn, were appearing on behalf of the petitioner.

The Court stated that the Court was having this evening session to accommodate Mr. Gladstein because the next day, Saturday, would be a legal holiday.

Mr. Gladstein expressed his appreciation of and thanked the Court for the courtesy of having permitted him to make his motion at unusual hours and stated that he was appearing by virtue of the courtesy of the Attorney General of this Territory, the Justices of the Supreme Court, and the Court, for the purpose of presenting his motion on behalf of the respondents. [180]

Mr. Gladstein then offered an oral motion to the Court to vacate and dissolve the temporary restraining order issued by the Court on September 17, 1946, on three grounds: (1) that the Court is bound as a matter of law, by the provisions of the United States Anti-Injunction Act, popularly known as the Norris-LaGuardia Act, pursuant to which no court of the United States is given the power, since 1932, to issue temporary restraining orders *ex parte* in labor disputes affecting the rights of working men who are on strike and who are engaged in picketing and other concerted activities for the purpose of prevailing in that strike; (2) that even if the Court should hold that, technically, the Norris-LaGuardia Act did not bind the Court, nevertheless, the Court should accept, as a matter of public policy, the principles established in that Act by the Congress of the United States, which should serve as a guide in this case; (3) that the temporary restraining order was so general, uncertain and ambiguous that the respondents could not understand that which they were prohibited from doing and that said order infringed upon rights which are protected by the Constitution of the United States, as stated by the Supreme Court of the United States.

Mr. Gladstein presented oral argument on the three grounds giving the following citations and authorities:

29 USCA Sec 101

186 NY Supp 95, pg 98

255 NY 307, pg. 318

174 NE 690, 73 ALR 669, 694

218 Missouri Appeals 516, 279 SW 232

Court recessed at 7:25 p.m. and reconvened at 7:40 p.m.

Counsel for the petitioner and counsel for respondents and the amicus curiae were present in court.

Mr. Gladstein continued his argument.

Mr. Montgomery E. Winn, counsel for petitioner, presented argument to the Court and cited the following citations and authorities:

30 Hawaii 860

5463 Congressional Record

5479 Congressional Record

5942 Congressional Record

5493 Congressional Record

5502 Congressional Record

469 Congressional Record

4630 Congressional Record

141 US 174, 35 L. Ed. 493

35 L. Ed. 693

Vol. 3 CCH Labor Law, par 62, page
975

Vol. 1 Teller, Sec. 124

Vol. 28 Am. Jurisprudence 432, Sec 256

310 US 88

312 US 219.

Court recessed at 9:45 p.m. and reconvened at 10:10 p.m.

Mr. Lewis, as amicus curiae, stated that the circuit courts of the Territory of Hawaii are not courts

of the United States and quoted the following citations and authorities:

303 US 201, 82 L. Ed. 748

82 L. Ed. page 748

House Reports 669, 72d. Congress, 1st Session.

Counsel for the respondents offered a short rebuttal.

Court recessed at 9:45 p.m. and reconvened at 10:10 p.m.

Counsel for petitioner, counsel for respondents and the amicus curiae were present in court. [181]

The Court found that no sufficient showing had been made warranting the dissolution of the restrain order as a whole and therefore overruled the motion to that effect, but stated that the Court desired to take under consideration, of its own motion, a possible modification of the restraining order. The Court, therefore, continued the matter until Monday, September 23, 1946, at 1 o'clock p.m.

Court adjourned at 10:20 p.m.

By Order of the Court.

/s/ JOHN ILALAOLE, JR.,

Courtroom Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [182]

COURT'S EXHIBIT No. 1

RADIOGRAM

Ihufwad 140 Drush Honolulu 23

Honorable Judge Philip L. Rice

Judge of the Fifth Circuit Court

Court House Lihue

Confirmation copy telephoned Sep. 23, 1946, to Nakamura by F.W. Time 146 P Date 9/23/46

Re hearing today on possible modification restraining order Lihue Plantation Company case we have instructed our attorneys Richard Gladstein and Richard Mirikitani not to appear, although the court has set hearing for today we have not actually been ordered to appear inasmuch as we regard the court's ex parte restraining order as improperly issue in excess of jurisdiction and denying union members due process of law we see no purpose in being represented at a hearing to modify an order which in the first place we consider to be void and issued in clear defiance of our constitutional right to be heard in advance of being judged once again we ask you to vacate the restraining order.

INTERNATIONAL LONGSHOREMEN'S
AND WAREHOUSEMEN'S UNION,

JACK HALL,

Regional Director.

I hereby certify that, exclusive of the printed portion of the Radiogram form on which the original in the file appears, the foregoing is a full, true,

and correct copy of the original of the "Court's Exhibit No. 1" in Equity No. 120 in the files of the Circuit Court, Fifth Circuit, Territory of Hawaii.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

[Endorsed]: Filed Sept. 23, 1946. [183]

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

At Chambers—In Equity

In Open Court, September 23, 1946

Court Convened at 1:37 P.M.

Present: Honorable Philip L. Rice, Judge Pre-
siding; Kenichi Umemoto, Court Re-
porter; John Ilalaole, Courtroom Clerk.

Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

HEARING ON ORAL MOTION

Appearances:

Montgomery E. Winn, Esq., and Ernest C. Moore,
Esq., of Vitousek, Pratt & Winn, attorneys for peti-

tioner; Dudley C. Lewis, Deputy Attorney General, T. H., *amicus curiae*; Joseph Nunes, one of the respondents.

The Court noted the appearance of Mr. Winn and Mr. Moore, attorneys for petitioner, and Mr. Lewis, *amicus curiae*.

The Court noted the absence of Mr. Richard Gladstein, attorney for respondents.

The Court called the names of the respondents. Mr. Joseph Nunes, one of the respondents, was the only one present in court.

The Court stated that after careful consideration of the pleading and argument adduced at the hearing upon the oral motion to vacate and dissolve the temporary restraining order, the Court had decided, on its own initiative, to modify the temporary restraining order and substitute therefor an amended temporary restraining order; that such modification was being made for the purpose of clarifying—where the Court felt that clarification might properly be made—the original temporary restraining order; that upon careful re-examination of the petition the Court in the first instance inadvertently failed to note the absence of an allegation in the petition upon which to base a prayer with respect to a particular paragraph of the original temporary restraining order—the Court referring to paragraph (f) of the petition and of the original temporary restraining order.

The Court handed counsel for petitioner, the *amicus curiae*, and Mr. Joseph Nunes, copies of the proposed amended temporary restraining order.

The Court read the proposed amended temporary restraining order.

Court recessed at 2:02 p.m. and reconvened at 2:15 p.m.

Counsel for petitioner and amicus curiae were present in court.

The Court amended the proposed amended temporary restraining order as follows: by striking out the word “interfer—” on line 2, page 5, and the words “ing with” on line 3, page 5, and substituting therefor the word “obstructing.”

The Court read a telegram received from Jack Hall, Regional Director, I.L.W.U., giving reasons for the absence of Mr. Richard Gladstein. Court ordered that the telegram be marked as Court’s Exhibit “1.”

The Court signed the amended temporary restraining order and ordered that same be filed.

Court adjourned at 2:16 p.m.

By order of the Court.

/s/ JOHN ILALAOLE, JR.,
Courtroom Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

AMENDED
TEMPORARY RESTRAINING ORDER

Filed at 2:16 o'clock p.m., September 23, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii. [186]

Territory of Hawaii to the International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al. Greetings:

Whereas, the Lihue Plantation Company, Limited, has filed herein a petition against you praying to be relieved touching the matters therein set forth; and

Whereas, an order to show cause issued from and under the seal of this Court ordering you to appear before the undersigned, Judge of the above entitled Court, on Friday, the 27th day of September, 1946, at the hour of 9 o'clock a.m., and [187]

Whereas, a Motion for Temporary Restraining Order was also filed and, by supporting affidavits and evidence adduced by the Petitioner at the time of the filing of the petition in the above entitled proceeding, it appeared that the acts therein specified and complained of will continue unless restrained pending a hearing on the petition in the above entitled proceeding; and

Whereas, pursuant to the prayer of said petition and the said motion, a Temporary Restraining Order was issued on the 17th day of September, 1946, and subsequently the Respondents, by Richard Gladstein, acting in their behalf and as their attorney, entered an appearance and presented an oral motion to dissolve and vacate said Temporary Restraining Order, and a hearing thereon was had before the Court, to wit, the undersigned, the Circuit Judge of the Fifth Circuit, Territory of Hawaii, At Chambers, In Equity, Petitioners being represented thereat by Attorneys Montgomery E. Winn and E. C. Moore, of Vitousek, Pratt, and Winn, and Dudley C. Lewis, Esq., Deputy Attorney

General of the Territory of Hawaii, appearing at the request of the Court and as amicus curiae, and the Court, after hearing and considering argument on said motion having overruled the same and having given notice to the parties to appear at, and continued proceedings until the 23d day of September, 1946, so that the parties might then be advised if the Court should then, upon its own initiative, modify, the aforesaid Temporary Restraining Order;

Now, Therefore, after consideration and deliberation, the Court does, on this 23d day of September, 1946, modify the aforesaid Temporary Restraining Order; and

It Is Ordered that said Temporary Restraining Order be, and it hereby is modified to the extent hereof and by substituting therefor of this Amended Temporary Restraining Order; [188]

Wherefore, you, International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., are hereby restrained and enjoined until the further order of this Court from in any way

(1) Obstructing or attempting to obstruct, by massing of pickets or otherwise, the ingress to or egress from the Petitioner's mill, store or other plantation buildings or premises located in the County of Kauai, Territory of Hawaii, of the Petitioner, its employees, or any others who may enter or desire to enter said premises for the purpose of performing work or for other lawful occasion;

(2) Obstructing or attempting to obstruct, by massing of pickets or otherwise, freedom of movement on or along the public or private roads or ways in or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may pass or desire to pass on or along said roads or ways for the purpose of performing work or for other lawful occasion;

(3) Obstructing or attempting to obstruct the free movement in, on or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may be in, on or about said premises for the purpose of performing work or for other lawful occasion;

(4) Threatening violence to, intimidating, or coercing, or attempting to intimidate or coerce, the employees of the Petitioner or those seeking employment with the Petitioner, or any persons who are lawfully upon the Petitioner's premises [189] or are proceeding to or from said premises;

(5) Coercing or intimidating, or attempting to coerce or intimidate, employees of the Petitioner or those seeking employment with the Petitioner, by

means of threats concerning the safety or welfare of the families of such employees or the families of those seeking employment with the Petitioner; or threatening violence to, or coercing or intimidating, or attempting to coerce or intimidate, such families;

(6) Without express written consent of the occupants thereof, visiting or being at or about the dwelling houses or residence premises belonging to Petitioner and occupied by employees of or persons seeking employment with Petitioner and thereat being offensive, disorderly, threatening or intimidating (in words or actions) towards, and harassing, such occupants, or any of them;

(7) Mass picketing by assembling in compact groups or congregating in crowds on or near real property of the Petitioner, whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by Petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property;

: And in Furtherance Hereof, you are hereby ordered to limit the number of pickets which you shall use to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the Petitioner's property, provided, however, that any pickets in excess of three (3) at any one point and station, shall be in motion and, except when passing each

other, shall maintain a distance of not less than ten (10) feet between each other and such picketing as shall be done by them shall not be violative of any of the preceding restrictive [190] provisions hereof; all pickets being hereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing the Petitioner, its employees, or any other persons lawfully seeking to enter or leave the Petitioner's premises; and all pickets being also enjoined from otherwise committing any of the acts hereinbefore prohibited. Any persons engaged in such picketing as is not hereby restricted or prohibited shall wear arm-bands reading "Authorized Picket," or "U P."

Dated: Lihue, Kauai, T. H., September 23, 1946.

/s/ PHILIP L. RICE,
Circuit Judge, Fifth Circuit,
Territory of Hawaii.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit Territory of
Hawaii. [191]

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

Petition for Injunction

Filed at 4:22 o'clock p.m., September 23, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAIN-
ING ORDER

The Territory of Hawaii to the High Sheriff of
the Territory of Hawaii, or his Deputy; the
Chief of Police of any County of the Territory
of Hawaii, or his Deputy; or any Police Officer
in the Territory of Hawaii:

You are commanded to serve, upon the Respond-
ents above named, certified copies—to wit, so that
each of said Respondents shall be served with one

of such copies—of the Amended Temporary Restraining Order by me, Circuit Judge of the Circuit Court of the Fifth Circuit, sitting at Chambers, In Equity, in the courtroom of the said Court, at Lihue, County of Kauai, Territory of Hawaii, entered and filed this 23d day of September, 1946.

You are further commanded to make a written return of your [192] proceedings in making of service as aforesaid and to file such return with the Clerk of said Court.

Witness my hand and the seal of the Circuit Court, Fifth Circuit, Territory of Hawaii, at Lihue, Kauai, Territory of Hawaii, this 23d day of September, 1946.

[Seal] /s/ PHILIP L. RICE,
 Circuit Judge, Fifth Circuit,
 Territory of Hawaii.

Attest:

 /s/ SAMUEL H. KIMURA,
 File Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
 Hawaii.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

At Chambers

Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER—
OFFICER'S RETURN

Served the within Summons on Yoshikazu Morimoto, therein named as one of the respondents by handing and delivering to and leaving with him personally, at Lihue, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Summons and of the Petition for Injunction, Order to Show Cause and Temporary Restraining Order attached thereto, and at the same time showing him the originals thereof, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 11:00 o'clock a.m., September 26, 1946.

/s/ SAMUEL H. KIMURA,

File Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii.

I hereby certify that the foregoing is a full, true
and correct copy of the original filed in the above
entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [194]

[Title of Circuit Court and Cause.]

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER—
OFFICER'S RETURN

Served the within Summons on William Paia,
therein named as one of the respondents, by hand-
ing and delivering to and leaving with him person-
ally, at Kapaia, Lihue, District, County of Kauai,
Territory of Hawaii, a certified copy of the said
Summons and of the Petition for Injunction, Order
to Show Cause and Temporary Restraining Order

attached thereto, and at the same time showing him the originals thereof, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 11:00 o'clock a.m., September 26, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [195]

[Title of Circuit Court and Cause.]

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER —
OFFICER'S RETURN

Served the within Summons on Thomas Take-
moto, also known as Tsutomu Takemoto, Sunao
Iwamoto and Charles Morita, therein named as some
of the respondents, by handing and delivering to
and leaving with each of them personally, at Lihue,
Lihue District, County of Kauai, Territory of Ha-

waii, a certified copy of the said Summons and of the Petition for Injunction, Order to Show Cause and Temporary Restraining Order attached thereto, and at the same time showing each of them the originals thereof, this 17th day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 11:02 o'clock a.m., September 26, 1946.

/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [196]

[Title of Circuit Court and Cause.]

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER —
OFFICER'S RETURN

Served within Summons on Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Benjamin Iida, also known as Benedict Iida, George Masaki, Ronald Toyofuku and Taku Akama, therein named as some of the respondents by handing and delivering to and leaving with each of them personally, at Kapaia, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Summons and of the Petition for Injunction, Order to Show Cause and Temporary Restraining Order attached thereto, and at the same time showing each of them the originals thereof, this 17th day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,
Captain of Police, County of
Kauai, T. H.

Filed at 11:03 o'clock a.m., September 26, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [197]

[Title of Circuit Court and Cause.]

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER —
OFFICER'S RETURN

Served the within Summons upon Unit 1, Local 149, of the International Longshoremen's and Warehousemen's Union (CIO), therein named as one of the respondents by handing and delivering to and leaving with Joseph Nunes personally, the person found in charge as president of the said Unit 1, Local 149, International Longshoremen's and Warehousemen's Union (CIO), at its office at Kapaia, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Summons and of the Petition for Injunction, Order to Show Cause and Temporary Restraining Order attached thereto, and at the same time showing him the originals thereof, this 17th day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 11:04 o'clock a.m., September 26, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [198]

[Title of Circuit Court and Cause.]

CHAMBERS SUMMONS PETITION FOR IN-
JUNCTION, ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER —
OFFICER'S RETURN

Served the within Summons upon Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), therein named as one of the respondents by handing and delivering to and leaving with William Paia personally, the person found in charge as president of the said Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), at its office at Kapaia, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Summons and of the Petition for Injunction, Order to Show Cause and Temporary Restraining Order attached thereto, and at the same time showing him the originals thereof, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 11:05 o'clock a.m., September 26, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [199]

SHERIFF'S SUMMONS

Served the within named, Equity No. 120 Chamber Summons, Petition for Injunction, Order to Show Cause and Temporary Restraining Order upon the within named defendant by Personally handing to its representative, a Certified Copy of the Original, at the same time showing to her the Original, at their headquarters, at Pier 11, Honolulu, T. H., on September 21st, 1946.

/s/ LUTHER K. KEKOA,
Deputy Sheriff, City and
County of Honolulu, T. H.

P. S.—Mrs. Rosenthal actually received the documents.

Filed at 11:06 o'clock a.m., September 26, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [200]

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

At Chambers
Equity No. 120

Petition for Injunction

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAINING
ORDER AMENDED TEMPORARY RE-
STRAINING ORDER—OFFICER'S RE-
TURN

Served the within Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order on William Paia, Tsutomu Tateishi as John Doe and Mitsuo Shimizu as Richard Roe, therein named as some of the respondents by handing and delivering to and leaving with each of them personally, at Kapaia, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Order for Service

of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 3:11 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting File Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk Circuit Court, Fifth Circuit, Territory of
Hawaii. [201]

[Title of Circuit Court and Cause.]

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAINING
ORDER, AMENDED TEMPORARY RE-
STRAINING ORDER—OFFICER'S RE-
TURN

Served the within Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order on Daniel Rapozo and Fernando Fontanilla, therein named as some of the respondents by handing and delivering to and leaving with each of them personally,

at Hanamaulu, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

Filed at 3:10 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [202]

[Title of Circuit Court and Cause.]

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAINING
ORDER, AMENDED TEMPORARY RE-
STRAINING ORDER — OFFICER'S RE-
TURN

Served the within Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order on Joseph Nunes, Benjamin Iida, also known as Benedict Iida, George Masaki, Ronald Toyofuku, Taku Akama, Thomas Takemoto, also known as Tsutomu Takemoto, Sunao Iwamoto, Yoshikazu Morimoto, Charles Morita and Shizuo Hamamoto as John

Doe 1, therein named as some of the respondents by handing and delivering to and leaving with each of them personally, at Lihue, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

Filed at 3:09 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting File Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii.

/s/ RICHARD I. SAKODA,
Captain of Police, County of
Kauai, T. H.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [203]

[Title of Circuit Court and Cause.]

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAINING
ORDER, AMENDED TEMPORARY RE-
STRAINING ORDER — OFFICER'S RE-
TURN

Served the within Order for Service of Copies of
Amended Temporary Restraining Order and

Amended Temporary Restraining Order upon Unit 1, Local 149, of the International Longshoremen's and Warehousemen's Union (CIO), therein named as one of the respondents by handing and delivering to and leaving with Joseph Nunes personally, the person found in charge as president of the said Unit 1, Local 149, International Longshoremen's and Warehousemen's Union (CIO), at Lihue, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

Filed at 3:08 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting File Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk Circuit Court, Fifth Circuit, Territory of
Hawaii. [204]

[Title of Circuit Court and Cause.]

ORDER FOR SERVICE OF COPIES OF
AMENDED TEMPORARY RESTRAINING
ORDER, AMENDED TEMPORARY RE-
STRAINING ORDER—OFFICER'S RE-
TURN

Served the within Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order upon Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), therein named as one of the respondents by handing and delivering to and leaving with William Paia, personally, the person found in charge as president of the said Local 149, International Longshoremen's and Warehousemen's Union (CIO), at Kapaia, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Order for Service of Copies of Amended Temporary Restraining Order and Amended Temporary Restraining Order, this 23rd day of September, A. D. 1946.

Dated at Lihue, Kauai, T. H., on the 26th day of September, A. D. 1946.

Filed at 3:07 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting File Clerk, Circuit Court, Fifth Circuit, Territory of Hawaii.

/s/ RICHARD I. SAKODA,

Captain of Police, County of
Kauai, T. H.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii.

SHERIFF'S RETURN

Served the within named Petition for Injunction and Amended Temporary Restraining Order, on the International Longshoremen's and Warehousemen's Union (CIO), by handing to its representative Mrs. Pauline Rosenthal (Office Manager) a certified copy of same, at the Union's office, Pier 11, South Queen St., Honolulu, T. H., this 24th day of September, 1946.

/s/ LUTHER K. KEKOA,
Deputy Sheriff, City and
County of Honolulu, T. H.

Filed at 3:06 o'clock p.m., September 26, 1946.
/s/ Yukichi Gushiken, Acting File Clerk, Circuit
Court, Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [206]

RADIOGRAM

Sep. 27, 1946.

Confirmation Copy Telephoned to Copy Called
for by.....Time.....Date.....

1 GH 141 Honolulu 26

Honorable Philip L. Rice

Judge of the Circuit Court

Fifth Circuit Court House Lihue

Reference Equity one twenty Lihue Plantation
Company versus International Longshoremen's and
Warehousemen's Union and others in which hear-
ing on the order to show cause why injunction
should not issue was originally scheduled for nine
a.m. September 27th Nineteen Forty-six Richard
Gladstein acting for and in behalf of all respond-
ents therein and Montgomery Winn as attorney for
Petitioner have entered into a stipulation extending
time to answer demur or otherwise plead the peti-
tion filed herein and also extending time for response
on order to show cause and continuing time of
hearing on said order until October seventh, Nine-

teen Forty-six all subject to approval of court stipulations being transmitted to you this date

RICHARD GLADSTEIN,

Attorney for Respondents,

VITOUSEK, PRATT & WINN,

By MONTGOMERY WINN,

Attorneys for Petitioner.

745A

745A

Filed at 8:17 o'clock a.m., September 27, 1946.

/s/ SAMUEL H. KIMURA,

File Clerk Circuit Court, Fifth Circuit, Territory
of Hawaii.

I hereby certify that, exclusive of the printed portion of the Radiogram form on which the original in the file appears, the foregoing is a full, true, and correct copy of the original in the files of the Circuit Court, Fifth Circuit, Territory of Hawaii.

[Seal] /s/ JOHN ILALAOLE, JR.,

Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [207]

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

STIPULATION AND ORDER EXTENDING
TIME ON ORDER TO SHOW CAUSE

Filed at 11:03 o'clock a.m., September 27, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

Vitousek, Pratt & Winn, Alexander & Baldwin
Bldg., Honolulu, T. H., Attorneys for Petitioner.

Whereas, the Respondents in the above entitled
matter have requested, through their attorney,
Richard Gladstein, and acting in their behalf, that
the time within which the Respondents may respond
to the Order to Show Cause herein be extended to
the 7th day of October, 1946; and that the hearing
on the said Order to Show Cause be continued until
the 7th day of October, 1946; and

Whereas, the Petitioner herein has no objection thereto;

Now Therefore, It Is Hereby Stipulated and Agreed between the Petitioner and the Respondents herein, by their respective attorneys, that with the approval of the Court:

- (1) The time within which the Respondents may respond to the Order to Show Cause in the above entitled matter is extended to the 7th day of October, 1946; and
- (2) The hearing on the Order to Show Cause shall be continued [209] until the 7th day of October, 1946, at the hour of nine o'clock a.m.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO),
LOCAL 149 OF THE INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSE-
MEN'S UNION (CIO), UNIT 1, LOCAL 149,
OF THE INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION
(CIO), JOSEPH NUNES, DANIEL
RAPOZO, FERNANDO FONTANILLA,
THOMAS TAKEMOTO, SUNAO IWA-
MOTO, WILLIAM PAIA, YOSHIKAZU
MORIMOTO, BENJAMIN IIDA, GEORGE
MASAKI, CHARLES MORITA, RONALD
TOYOFUKU, TAKU AKAMA, JOHN DOE,
MARY DOE, RICHARD ROE, et al.,

By /s/ RICHARD GLADSTEIN,

Attorney for Respondents.

THE LIHUE PLANTATION COMPANY,
LIMITED,

By VITOUSEK, PRATT & WINN,
By /s/ E. C. MOORE,

Attorneys for Petitioner.

Good cause appearing therefore, the above is approved and it is so ordered: provided, however, and upon the condition that the Amended Temporary Restraining Order heretofore issued shall continue in effect until further order of this Court.

[Seal] /s/ PHILIP L. RICE, *Philip L. Rice*
Judge of the above entitled
Court. *1904*

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause. *1904*

[Seal] /s/ JOHN ILALAOLE, JR., *John Ilalaole, Jr.*
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [210] *1904*

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

STIPULATION EXTENDING TIME

Filed at 11:03 o'clock a.m., September 27, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

Vitousek, Pratt & Winn, Alexander & Baldwin
Bldg., Honolulu, T. H., Attorneys for Petitioner.

It Is Hereby Agreed by and between The Lihue
Plantation Company, Limited, the Petitioner herein,
by its attorneys, and the above named Respondents,
by Richard Gladstein acting in their behalf and
as their attorney, that said Respondents may have
to and including the 7th day of October, 1946, within

which to answer, demur or otherwise plead to the Petition filed herein.

Dated: Honolulu, T. H., September 26, 1946.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,

By /s/ RICHARD GLADSTEIN,
Attorney for Respondents.

THE LIHUE PLANTATION COMPANY,
LIMITED,

By VITOUSEK, PRATT & WINN,
By /s/ E. C. MOORE,
Attorneys for Petitioner.

Approved:

/s/ PHILIP L. RICE,
Judge of the above entitled
Court.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [212]

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

At Chambers—In Equity

In Open Court, Friday, September 27, 1946.

Court Convened at 9:00 a.m.

Present: Honorable Philip L. Rice,
Judge Presiding.

Kenichi Umemoto, Court Reporter,
John Ilalaole, Jr., Courtroom Clerk.

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

Appearance:

Yoshikazu Morimoto, one of the respondents.

The Court read into the record a telegram—filed at 8:17 a.m., September 27, 1946—from Richard Gladstein, attorney for respondents, and Vitousek, Pratt and Winn by Montgomery Winn, attorneys for petitioner.

The Court stated that upon the receipt of the stipulation as mentioned in the telegram the Court will approve same, subject, however, on the condi-

tion that the Amended Temporary Restraining Order continue in effect until the hearing on the order to show cause.

Court recessed at 9:03 a.m. reconvening at 11:30 a.m.

No appearance was noted.

Court stated that the stipulation extending time had been received, approved and filed and that the respondents had up to and including the 7th of October, 1946, within which to answer, demur or otherwise plea to the petition as filed; that the stipulation and order extending time on order to show cause allowing the respondents until October 7, 1946, within which to respond to the order to show cause had also been received, approved and filed upon the condition that the Amended Temporary Restraining Order continue in effect until the further order of the Court. Hearing on order to show cause was set at 9:00 a.m., October 7, 1946.

Court adjourned at 11:35 a.m.

By Order of the Court.

/s/ JOHN ILALAOLE, JR.,
Courtroom Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [213]

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

STIPULATION EXTENDING TIME

Filed at 11:43 o'clock a.m., October 4, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

Vitousek, Pratt & Winn, Alexander & Baldwin
Bldg., Honolulu, T. H., Attorneys for Petitioner.

It Is Hereby Agreed by and between The Lihue
Plantation Company, Limited, the Petitioner herein
by its attorneys, and the above named Respondents,
by Richard Gladstein acting in their behalf and as
their attorney, that said Respondents may have to

and including the 18th day of November, 1946, within which to answer, demur or otherwise plead to the Petition filed herein.

Dated: Honolulu, T. H., October 3, 1946.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

By /s/ RICHARD GLADSTEIN,
Attorney for Respondents.

THE LIHUE PLANTATION COMPANY,
LIMITED,

By VITOUSEK, PRATT & WINN,
By /s/ E. C. MOORE,
Attorneys for Petitioner.

Approved:

/s/ PHILIP L. RICE,
Judge of the above entitled
Court.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [215]

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

STIPULATION AND ORDER EXTENDING
TIME ON ORDER TO SHOW CAUSE

Filed at 11:44 o'clock a.m., October 4, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

Vitousek, Pratt & Winn, Alexander & Baldwin
Bldg., Honolulu, T. H., Attorneys for Petitioner.

Whereas, the Respondents in the above entitled
matter have requested, through their attorney,
Richard Gladstein, and acting in their behalf, that
the time within which the Respondents may respond
to the Order to Show Cause herein be extended to
the 18th day of November, 1946; and that the hear-
ing on the said Order to Show Cause be continued
until the 18th day of November, 1946; and

Whereas, the Petitioner herein has no objection
thereto;

Now Therefore, It Is Hereby Stipulated and Agreed between the Petitioner and the Respondents herein, by their respective attorneys, that with the approval of the Court:

- (1) The time within which the Respondents may respond to the Order to Show Cause in the above entitled matter is extended to the 18th day of November, 1946; and
- (2) The hearing on the Order to Show Cause shall be continued until the 18th day of November, 1946, at the hour of nine o'clock a.m.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO),
LOCAL 149 OF THE INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSE-
MEN'S UNION (CIO), UNIT 1, LOCAL 149,
OF THE INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION
(CIO), JOSEPH NUNES, DANIEL
RAPOZO, FERNANDO FONTANILLA,
THOMAS TAKEMOTO, SUNAO IWA-
MOTO, WILLIAM PAIA, YOSHIKAZU
MORIMOTO, BENJAMIN IIDA, GEORGE
MASAKI, CHARLES MORITA, RONALD
TOYOFUKU, TAKU AKAMA, JOHN DOE,
MARY DOE, RICHARD ROE, et al.,

By /s/ RICHARD GLADSTEIN,
Attorney for Respondents.

THE LIHUE PLANTATION COMPANY,
LIMITED,

By VITOUSEK, PRATT & WINN,
By /s/ E C. MOORE,
Attorneys for Petitioner.

Good cause appearing therefore, the above is approved and it is so ordered, provided, however, and upon the condition that the Amended Temporary Restraining Order heretofore issued shall continue in effect until further order of this Court.

/s/ PHILIP L. RICE,

Judge of the above entitled
Court.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [218]

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
Respondents.

TRANSCRIPT OF ORAL MOTION ON BE-
HALF OF RESPONDENTS TO DISSOLVE
AND VACATE THE TEMPORARY RE-
STRAINING ORDER, AND ORAL DECI-
SION AND RULING OF THE COURT ON
SAID MOTION

Filed at 11:48 o'clock a.m. October 19, 1946. (sgd)
Samuel H. Kimura, File Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

Kenichi Umemoto, Lihue, Kauai, T. H., Acting
Court Reporter. [219]

Lihue, Kauai, T. H.

September 20, 1946

Present: Honorable Philip L. Rice,
Circuit Judge Presiding;
John Ilalaole, Jr., Courtroom Clerk;
Kenichi Umemoto, Acting Court Reporter.

Appearances: Montgomery E. Winn, Esq., and Ernest C. Moore, Esq. of Vitousek, Pratt and Winn, attorneys for petitioner; Richard Gladstein, Esq., attorney for respondents; Dudley C. Lewis, Esq., Deputy Attorney General, Territory of Hawaii, *amicus curiae*.

Mr. Gladstein: If the Court please, I want to say first that I want to express my appreciation for the courtesy of the Court in permitting me to make this motion at unusual hours and to thank the Court for the opportunity to do so. I want to say that I would not have asked the Court to extend unduly, as we are here doing, the hours of the court unless there had been great and important reasons for that request.

I appear here, as your Honor has stated, by virtue of the courtesy of the Attorney General of this Territory, the Justices of the Supreme Court and by the courtesy of this Court, for the purpose of presenting on behalf of the respondents in case No. 3948 in equity—120, I am sorry, No. 120—a motion, which I now make, for the Court to vacate and dissolve a temporary restraining order which was issued in this matter on Tuesday of this week, [220] and I make that motion, your Honor, upon three grounds:

The first ground is that, I submit, this Court is bound, as a matter of law, by the provisions of the United States Anti-Injunction Act, popularly known as the Norris-LaGuardia Act, pursuant to which no court of the United States is given the power, any

longer—since 1932—to issue temporary restraining orders *ex parte* in labor disputes affecting the rights of working-men who are on strike and who are engaged in picketing and in other concerted activities for the purpose of prevailing in that strike.

My second ground, your Honor, is that even should you think that, technically, the Norris-LaGuardia Act did not bind you, nevertheless, the principles established in that Act by the Congress of the United States, I submit, should serve as a guide for the Court in this case to accept as a matter of public policy. And I think, here, it will not be denied that the restraining order that was issued in this case was issued *ex parte* without notice to the union and its members and without an opportunity for a hearing, without the taking of testimony of witnesses.

My third ground, your Honor, is that the injunction that has been issued—the restraining order—is so broad, uncertain, ambiguous that we cannot honestly and in fairness understand that which we are prohibited to do from that which we are entitled to do, and that, in the breath of its terms, this restraining order infringes upon rights which the Supreme Court of our country has said are protected by the Constitution of the United States.

(Argument on said motion.)

The Court: The Court, after hearing the argument, feels that nothing has been presented and no sufficient showing made warranting the dissolution of the restraining order as a whole, but the Court

will take under consideration until Monday—this next Monday—the possible modification, in some respects, of the restraining order.

It has been a long, full day for the Court and the Court does not feel that it can, at this time, go into details of possible modification, but, [221] under the rules of practice and procedure, the Court feels that no sufficient showing has been made for the dissolution of the restraining order as a whole. The motion to that effect is overruled.

The Court does, however, give notice that it is taking under consideration, of its own motion, a possible modification of the restraining order.

I Hereby Certify that the foregoing is a correct transcript of my shorthand notes of the oral motion on behalf of respondents to dissolve and vacate the temporary restraining order and the oral decision and ruling of the Court on said motion.

/s/ KENICHI UMEMOTO,
Acting Court Reporter.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii
At Chambers
Equity No. 120

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

PETITION FOR INJUNCTION
AMENDED TEMPORARY RESTRAINING
ORDER—OFFICER'S RETURN

Served the within Amended Temporary Restraining Order on Marcos Arincorayan as John Doe 2 and on Atanasio Lucas Migia as John Doe 4, therein named as two of the respondents by handing and delivering to and leaving with each of them personally, at Kealia, Kawaihau District, County of Kauai, Territory of Hawaii, a certified copy of the said Amended Temporary Restraining Order, this 31st day of October, A. D., 1946.

Dated at Kapaa, Kauai, T. H., this 31st day of October, A. D., 1946.

/s/ HENRY T. SHELDON,

Captain of Police,

County of Kauai, T. H.

Filed at 3:54 o'clock p.m. November 1, 1946,
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii. [223]

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

[Title of Circuit Court and Cause.]

AMENDED TEMPORARY RESTRAINING
ORDER—OFFICER'S RETURN

Served the within Amended Temporary Restraining Order on Gregorio Reyes as John Doe 3, therein named as one of the respondents by handing and delivering to and leaving with him personally, at Lihue, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Amended Temporary Restraining Order, this 31st day of October, A. D., 1946.

Dated at Lihue, Kauai, T. H., on the 1st day of November, A. D., 1946.

/s/ JOE S. CARVALHO,
Lieutenant of Police,
County of Kauai, T. H.

Filed at 3:55 o'clock p.m. November 1, 1946.
(s) Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and the correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

[Title of Circuit Court and Cause.]

AMENDED TEMPORARY RESTRAINING
ORDER—OFFICER'S RETURN

Served the within Amended Temporary Restraining Order on Kensuke Yamashiro as Richard Roe 1, therein named as one of the respondents by handing and delivering to and leaving with him personally, at Kapaa, Kawaihau District, County of Kauai, Territory of Hawaii, a certified copy of the said Amended Temporary Restraining Order, this 31st day of October, A. D., 1946.

Dated at Kapaa, Kauai, T. H., this 31st day of October, A. D., 1946.

/s/ HENRY T. SHELDON,
Captain of Police,
County of Kauai, T. H.

Filed at 3:56 o'clock p.m. November 1, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

[Title of Circuit Court and Cause.]

AMENDED TEMPORARY RESTRAINING
ORDER—OFFICER'S RETURN

Served the within Amended Temporary Restraining Order on Masami Mukai as Richard Roe 2, therein named as one of the respondents by handing and delivering to and leaving with him personally, at Hanamaulu, Lihue District, County of Kauai, Territory of Hawaii, a certified copy of the said Amended Temporary Restraining Order, this 31st day of October, A. D., 1946.

Dated at Lihue, Kauai, T. H., on the 1st day of November, A. D., 1946.

/s/ JOE S. CARVALHO,
Lieutenant of Police,
County of Kauai, T. H.

Filed at 3:57 o'clock p.m. November 1, 1946.
/s/ Samuel H. Kimura, File Clerk, Circuit Court,
Fifth Circuit, Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth
Circuit, Territory of Hawaii.

In the Circuit Court of the Fifth Circuit,
Territory of Hawaii

Equity No. 120

At Chambers—In Probate

In Open Court, Monday, November 18, 1946
Court Convened at 9:01 A.M.

Present: Honorable Philip L. Rice,
Judge Presiding;
Kenichi Umemoto, Court Reporter;
John Ilalaole, Jr., Courtroom Clerk.

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

Appearances: A. G. Kaulukou, Esq., County Attorney,
County of Kauai, T. H., Deputy Attorney
General, Territory of Hawaii, amicus curiae.

The Court instructed the Bailiff to call the matter
and to summon all interested parties to court.

The Bailiff called three times and informed the
court of no appearances.

Mr. Kaulukou, County Attorney, appeared on behalf of the Attorney General of the Territory of Hawaii, who acted as amicus curiae, in order that he may notify the office of the attorney General as to the present disposition of the case.

Mr. Kaulukou further apprised the Court that he received a telephone call from one of the respondents, Mr. Shimizu, who inquired whether or no the above matter would be heard on this date and as to whether or no their appearance would be necessary. Mr. Kaulukou replied that he did not know.

Mr. Kaulukou further informed the court that he thought the matter was set for 10:00 a.m. on this date.

The Court stated that the matter was continued to this date by written stipulation and filed in this court which set the matter at 9:00 a.m. on this date.

The Court further stated that a letter was received, dated November 13, 1946, from the firm of Vitousek, Pratt & Winn, on behalf [227] of the petitioner, which the Court read. The letter requested a continuance of the matter and that it be set without day for final disposition at the request of either party involved.

Court recessed at 9:08 a.m., reconvening at 9:36 a.m.

The Court stated that it was informed by Mr. Morimoto, one of the respondents herein, that At-

torney George Andersen had returned to Honolulu and that there was no one on Kauai to represent the respondents at the hearing set for this date.

The Court ordered that the matter be continued without day, to be set for final disposition at the request of either party involved and that the amended temporary restraining order heretofore issued to continue in effect until the further order of the court.

Court adjourned at 9:40 a.m.

By Order of the Court:

/s/ JOHN ILALAOLE, JR.,
Courtroom Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal] /s/ JOHN ILALAOLE, JR.,
Clerk, Circuit Court, Fifth Circuit, Territory of
Hawaii. [228]

EXHIBIT B

In the Circuit Court of the Fifth Judicial Circuit
Territory of Hawaii

Eq. No. 120

At Chambers—In Equity

THE LIHUE PLANTATION COMPANY,
LIMITED,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION (CIO), et al.,
etc.,

Respondents.

PETITION FOR INJUNCTION

Lihue, Kauai, T. H.,
September 17, 1946.

Present: Honorable Philip L. Rice,
Judge Presiding;
John Ilalaole, Jr., Courtroom Clerk;
Kenichi Umemoto, Court Reporter.

Appearances: Ernest C. Moore, Esq., of Vitousek,
Pratt & Winn, Attorneys for Petitioner; A. G.
Kaulukou, Esq., County Attorney, County of
Kauai, and Deputy Attorney General of the
Territory of Hawaii, amicus curiae.

TRANSCRIPT OF EVIDENCE

The Court: The Court will proceed with the
hearing of evidence in support of your petition.

Mr. Moore: I am prepared to submit certain affidavits at this point. If the Court would like to have witnesses I would request a recess or adjournment here with time for me to get them together.

The Court: Do you desire to offer those affidavits in evidence at this time?

Mr. Moore: I do. [230]

The Court: You may offer them and they will be marked petitioner's exhibits from 1 on, consecutively. For the record, please state the name of the affiant, then mark it accordingly, Mr. Clerk. Read off the names of the affiants—or if you will, Mr. Moore.

Mr. Moore: Ronald G. Watt.

The Court: That will be Exhibit 1. These are affidavits.

Mr. Moore: You want his capacity or not at this time, your Honor?

The Court: Pardon me.

Mr. Moore: You want his capacity as an employee?

The Court: Not necessarily.

Mr. Moore: Some of them are not employees but private citizens.

The Court: No, merely the name of the affiant.

Mr. Moore: Keith B. Tester.

The Court: Exhibit 2.

Mr. Moore: Antone Camara.

The Court: Exhibit 3.

Mr. Moore: Hale C. Cheatham.

The Court: Exhibit 4.

Mr. Moore: Wm. A. H. Buddingh.

The Court: Exhibit 5.

Mr. Moore: Norbert Penna.

The Court: Exhibit 6.

Mr. Moore: Courtland E. Ashton.

The Court: Exhibit 7.

Mr. Moore: Leonard T. Cannon.

The Court: Exhibit 8.

Mr. Moore: Alexander G. Hutton.

The Court: Exhibit 9.

Mr. Moore: Harry Nogami.

The Court: Exhibit 10. [231]

Mr. Moore: I have some additional affidavits from some of the same persons, although not marked by separate numbers, on subsequent dates.

The Court: They may be marked by separate numbers.

Mr. Moore: Courtland E. Ashton, again.

The Court: Exhibit 11.

Mr. Moore: William A. H. Buddingh.

The Court: Exhibit 12.

Mr. Moore: Ronald G. Watt.

The Court: Exhibit 13.

Mr. Moore: John S. Carvalho.

The Court: Exhibit 14.

Mr. Moore: Mary Soares.

The Court: Exhibit 15.

Mr. Moore: Georgina Rosa.

The Court: Exhibit 16.

Mr. Moore: Mr. and Mrs. Antone Camara.

The Court: Exhibit 17.

Mr. Moore: Joint affidavit. Charles J. Fern.

The Court: Exhibit 18.

Mr. Moore: C. E. S. Burns.

The Court: Exhibit 19.

Mr. Moore: John Travasso.

The Court: Exhibit 20.

Mr. Moore: Frank Barretto.

The Court: Exhibit 21.

Mr. Moore: Ira W. Newton.

The Court: Exhibit 22.

Mr. Moore: James P. Langley.

The Court: Exhibit 23.

Those are all the exhibits you care to offer at this time?

Mr. Moore: That is correct. [232]

The Court: They may be received in evidence and marked accordingly.

Mr. Moore: This is for the purpose of the hearing on temporary restraining order and in connection with the order to show cause.

The Court: The Court finds in the files, loosely attached, a motion for temporary restraining order, did you intend filing that?

Mr. Moore: I did, and——

The Court: It has not been marked filed by the clerk.

Mr. Moore: The basis for that was that it is based upon the order to show cause, issuance of that and the motion for temporary restraining order in the interim period. It is assumed—based upon the same, but these will be important on that motion.

The Court: They may be considered in both matters.

Do you purpose offering oral evidence? The Court would be interested in hearing from you whether you feel it is necessary or not.

Mr. Moore: If the Court would be interested in having some of the affiants appear personally, that can be arranged.

The Court: The Court would like to examine some of the affiants.

Mr. Moore: Would you require that all of them come?

The Court: No.

Mr. Moore: A few of them?

The Court: A few of them. You yourself presumably know the ones whose testimony is most relevant and most material to what you seek and the Court will not require cumulative evidence if you can have present some of those who can testify as to the essential facts on which you rely for your injunction proceedings.

Mr. Moore: It will take a little while to get them together.

The Court: Would one o'clock be satisfactory to you. It is now 11:15.

Mr. Moore: 11:15. I do not know the circumstances now existing over here. [233]

The Court: Do you want to take a recess and make inquiry?

Mr. Moore: I would like to do that, yes.

The Court: The Court will take a recess until recalled.

(Court recessed at about 11:15 a.m. and reconvened at 11:35 a.m.)

The Court: You are ready to proceed?

Mr. Moore: I am.

The Court: The Court is in session. You have a witness present you desire to have sworn?

Mr. Moore: I have made arrangements, your Honor, to have the witnesses come over and they are coming over as quickly as we can obtain them. I have obtained a few witnesses now and am ready to proceed with having them testify to exactly what has happened. The first witness will take the stand.

CALEB E. S. BURNS

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you state your name?

A. Caleb E. S. Burns.

Q. Where do you live, Mr. Burns?

A. Lihue, Kauai.

Q. What is your employment?

A. I am general manager of The Lihue Plantation Company, Limited.

Q. Will you state to the Court what you observed on Saturday, commencing Saturday morning, the 14th.

The Court: That is the 14th of this month you are referring to?

Mr. Moore: That is right, September 14th.

(Testimony of Caleb E. S. Burns.)

A. At approximately seven o'clock, Mr. Tester called me by phone and stated that there was a mob of strikers surrounding the entrances of our factory.

Q. Your employees were then on strike?

A. Employees on strike.

Q. Since——

A. Since the first of September. And that they were refusing [234] to let our men, who consisted of supervisory force, to enter through the line into the factory. I immediately proceeded down to the factory and went through the crowd and entered through the back way nearest from my home. I stopped my car and approached the Chief of Police Crowell and asked him what he was going to do. There was a large gathering of men there—oh, four or five hundred men, I would say—who were hooting and calling, making a big disturbance when I entered. The sheriff told me to wait.

The Court: Pardon me for interrupting you. You are mentioning the sheriff. The Court takes judicial notice of the fact that this county has no sheriff. You are referring to the chief of police, are you?

A. I am referring to Chief of Police Crowell. Is it all right if I call him "Chief"?

The Court: Chief—that is correct.

A. The Chief was in a huddle with a group of strikers. At the time I approached him he told me to wait. I waited a while and went back to him again and asked him what he was going to do, and the same reply was to wait. I don't know how many

(Testimony of Caleb E. S. Burns.)

times I approached him, but I approached him several times. Finally, I went to him and said that we would like to have the entrances to our factory grounds opened up, so that our employees could enter. He again said, "Wait." Mr. Tester was with me when I approached him at the time. Shortly after that, Chief Crowell came over to me and, in the presence of Mr. Tester and Mr. Smith, said that the union leaders were willing to let the manager, assistant manager, Mr. Watt and possibly Rockwell Smith enter, and would that be all right. My reply to the chief was that we wanted the road opened so that anyone having business in our factory might enter. This was approximately—as a matter of fact I think it was 7:55 in the morning.

Q. In other words your impression of the conversation was that [235] they were limiting who could and who could not enter the plant as far as they were concerned.

A. That was definitely so according to Chief Crowell's statement to me. I then went back to where our group of employees were standing and told them that they had better go home and get their breakfast. I proceeded to do likewise. On the way home, thinking the situation over, I decided it would probably be better to go back and tell our boys, employees, to go home and therefore take off some of the tension from the situation. I turned around and went back and went over to Chief Crowell and, in the presence of Charlie Fern, who was standing there, told him what I planned to do.

(Testimony of Caleb E. S. Burns.)

He approved of the action and I went and told the few men that were still there to return home and stay there until the road was opened. When I talked to the chief I told him that we were still expecting him to open that road.

I have left out one little fact that you might want to hear; that because of the temper shown by the mob I thought it would be wise to have Mr. Charlie Rice, Chairman of the Police Commission, see what was going on. I attempted to reach him by telephone but was unable to do so and I went back and told the chief what I was trying to do and recommend that he dismiss an officer so that Mr. Rice might be brought into the scene. I then went to my office to telephone to Honolulu but was unable to get anybody at that time of the morning. But I told Mr. Townsley that I was looking for Mr. Charlie Rice and he said that he had just left the post office, so I telephoned to his house or had Mr. Townsley telephone to his house. He found Mr. Rice there and I talked to Mr. Rice and told him the situation. He immediately came up to the factory and spoke to Chief Crowell. I also called Mr. McKeever, who is a member of the Police Commission, for the same reason and he shortly after that came down to see me. I think that covers largely what happened that morning. [236]

Q. Do you know, Mr. Burns, whether any employees were able to gain access to the mill that evening?

(Testimony of Caleb E. S. Burns.)

A. No, not to my knowledge. Nobody entered the mill.

Q. You have valuable equipment throughout the mill? A. Yes.

Q. You have utility equipment also?

A. Yes, sir.

Q. Through which you control the utilities in this area? A. We have——

Q. Will you explain that to the Court?

A. We have two hydro power stations up in the mountains, who are, who, which supply the current when the mill is not operating, which is the case on this date. The load on the hydro stations sometimes reaches a point beyond which the hydro stations can supply sufficient power. At this particular time and for several days the power load was just about what the hydro stations could supply. Whenever we reach this situation something has to be done and usually our load at this time of the year—maximum load—comes on about 6 o'clock, between 6 and 7 o'clock in the evening. If that load is more than the power produced by the hydro stations, then it has been customary for Mr. Cheatham, who is our head electrician in charge of power, to cut off some of the lines, and the only way that can be done is through the switchboard which is in the factory. In other words, we always have somebody on duty in the power house in the factory, whether the factory is running or not, in order to take care of any condition which might make it necessary to change, shut off some of the lines. This we have not

(Testimony of Caleb E. S. Burns.)

been able to do, was not able to do on that day, because no one was allowed to enter the factory.

This utility supplies the community, including hospitals and other essential facilities?

A. Yes, sir. [237]

Q. That condition continued—did it continue on Monday, September 16?

A. The condition was exactly the same on Monday. We were fortunate in having the rains in the mountains which made it possible to generate enough power by the hydros carrying full load—utility load.

Q. In other words, the condition continued so that on Monday personnel were denied access to the mill?

A. That is right. They were not allowed to go into the mill. I have not been allowed to enter the mill at any time since I went in the yard early Saturday morning.

Q. Going back to Saturday, Mr. Burns, concerning the attitude of the men, large numbers—they were milling around, were they?

A. Yes, gathered in mobs in front of the road, the road entering the mill; also, over the warehouse side.

Q. And much shouting?

A. Much shouting.

Q. Very boisterous? A. Very boisterous.

Q. Were there as to you personally any threats or were you in any way intimidated?

A. Only to this extent, that when I approached the crowd in the automobile I approached very

(Testimony of Caleb E. S. Burns.)

slowly, in low gear, and they were very reluctant to separate. As a matter of fact they crowded right up to the car, in front of the car and the sides of the car. There was hooting, yelling and I think the statements were made, "Turn him over. Turn him over. Stop him," stuff of that kind. They had previously, I was told——

The Court: Please don't mention what you were told. That would be mere hearsay.

A. All right. Well, that is as far as I'll go.

Q. The attitude of the mob, in other words by numbers and shouting, etc.

A. I would like to make one other statement here. When I got [238] out of the car, I suppose in my excitement when I went over to speak to the sheriff, I left the key in the car and when the sheriff told me to wait the first thing I thought of was to go and get my key, which I did, but on the way going through the crowd I was bumped, shouldered by one man. I wasn't hurt, nothing serious, but it showed the temper of the crowd; that they were ready to do almost anything provided there was an opportunity.

Q. Have there been any further developments this morning with reference to strikers in your plant?

A. You are referring to the factory?

Q. Or any other premises.

A. This morning, as has been my custom for many years, I attempted to go into the factory yard, went down and turned in and a group of men

(Testimony of Caleb E. S. Burns.)

immediately swarmed out in front of me. I stopped, turned around and came to the office. At the office there was a large group of men surrounding the office up on the veranda, also in the back of the office, also on the road which leads to the garage where I park my car. I turned in there as usual. The crowd in front of me on the road made it necessary for me to stop and go in low gear, but I proceeded to go through and went into the garage. That mob was hooting, making a lot of noise, a lot of disturbance. When I got into the office, Mr. Townsley was there, Mr. Wedemeyer was there, I believe, Henderson was there, and Joe Vierra was there. All other employees of the office were not there. Several employees had attempted to get into the office and were stopped. They later telephoned to Mr. Townsley and told him they couldn't get in. He told them to stay home.

Every time any of our employees went along the highway, the main road, which I saw Mr. Ashton do in his car—he went to the [239] post office, parked his car alongside the road. The minute he showed up they started to hoot and yell, which they did every time any of our employees who are not on strike appear.

Q. In your opinion, the situation this morning at the office was not too dissimilar from the situation at the mill. In other words, they were attempting to control who they would decide to let in and attempting to intimidate all persons trying to get in.

A. The only difference was that at the mill they

(Testimony of Caleb E. S. Burns.)

let no one in and then after the chief had talked to them for hours, as I previously stated, he said that the manager, assistant manager, Mr. Watt and possibly Mr. Smith might go in. The back of the office episode this morning they made no attempt, no real attempt, to stop me, except a lot of men were at the entrance of the garage. They made no attempt to stop Mr. Townsley, or Mr. Tester, Mr. Wedemeyer, Mr. Henderson, Mr. Smith, but they did stop others. In other words, it was very evident that they were letting into the office those that they chose to let in.

Q. Did you witness their stopping others?

A. What was that question?

Q. Did you witness their stopping others trying to get in?

A. No, I did not. I did not see them stop the others. Mr. Townsley told me that they had and further that those men that they attempted to stop had telephoned to him that they were unable to get in and wanted to know what they should do.

Q. He ordinarily reports to you?

A. He would in this case, because I was anxious to know who were working and who were not working.

The Court: Please state for the record the position that Mr. Townsley holds in the office.

A. Mr. Townsley is our office manager. He is office manager of The Lihue Plantation Company, Limited.

(Testimony of Caleb E. S. Burns.)

Q. Mr. Burns, from these past incidents and occurrences which [240] have continued, is it your opinion as manager of the plantation that you are being deprived of your property in the way that you would attempt to operate it either under normal circumstances or even under these conditions?

A. Absolutely. We have called the Chief of Police several times. We called the Chief of Police this morning. Mr. Townsley called him in my presence and told him that there was a mob in front of our office, that they were on the veranda of the office making a great disturbance and wouldn't let certain people in and we would like to have the mob removed. His reply to Mr. Townsley was that—I was on the line so I heard it—was that the County Attorney had instructed him not to break a picket line and until he received other instructions he could not do so. I feel that the law is not being enforced. I should say the laws are not being enforced, not knowing the laws myself too well. We certainly have rights.

Q. In your opinion, in judging from your personal experiences with this, you believe that there is no indication it will not continue; it will probably continue?

A. I think it will get worse; as soon as the mob learns that the police will not enforce the law, why, naturally they will go to a greater extent. If the law had been enforced at the mill we wouldn't have had the mob at the office.

(Testimony of Caleb E. S. Burns.)

Mr. Moore: I believe that is all I have, your Honor, unless you care to ask some questions yourself.

Q. (By the Court): Relative to the episode at the mill, that was on Saturday, the 14th instant, was it? A. Yes, sir.

Q. Were the persons constituting what you refer to as a mob on the public highway or on plantation property?

A. I would say that at least—well, I think all practically were on plantation property. Our road joins into the main highway [241] and they were all on the mill side of the highway, which would be——

Q. That is where your plantation road joins the main highway near the new viaduct?

A. That is right.

Q. How many entrances are there—plantation entrances or roads—into the mill or factory?

A. There are three entrances.

Q. Did you go to the other entrances after being blocked at this first entrance?

A. I came in the back entrance, which is one entrance off the main highway just after you cross the bridge over the railroad tracks. I entered that entrance and went out the what we call the main entrance to the factory which is on the old road where the greater mob——

Q. The old road between the Lihue Store corner and the Lihue Schoolhouse corner?

A. Right. Then I went over also to the other entrance which is the entrance beyond our ware-

(Testimony of Caleb E. S. Burns.)

house which goes to the blacksmith shop. That also had a group of men guarding it—group of strikers guarding it—preventing us from going in.

Q. Were they in such a position that they blocked your right of way? A. Absolutely.

Q. All of them, in each instance?

A. In each instance. The picket line on the back entrance where I entered the grounds probably did not consist of more than ten men and they were not in the middle of the road. That is why I went in there. I turned and went in there before they could get across the road to stop me. It is very evident that they would have attempted to stop me had they had time. I was traveling right along because there was nobody in front of me. The other entrance where I went out was a mass of people and it was necessary for me to put the car in low gear and just force my way through. [242]

Q. In each instance the men were on the plantation property, were they? A. Yes, sir.

Q. This instance of this morning that you refer to about the men being at the plantation office, were they invited there by you or anyone?

A. They were not invited there by——

Q. Any plantation authority.

A. ——any plantation authority, no.

Q. Did you ask thm to leave?

A. I did not ask them to leave. We did ask the Chief of Police to remove them.

The Court: That is all.

Mr. Moore: I have another witness outside.

I have my second witness here, your Honor.

COURTLAND E. ASHTON

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you please give the Court your name?

A. Courtland E. Ashton.

Q. Where do you live?

A. In Lihue, Hawaii.

Q. Are you employed where?

A. At the Lihue Mill.

Q. In what capacity?

A. As head sugar boiler.

Q. How long have you been working for the company, Mr. Ashton?

A. Since March, 1945.

Q. The employees of the company and those under you are now out on strike?

A. They are.

Q. Since what time?

A. Since the first of September. [243]

Q. They have not been reporting regularly for work?

A. They have not been reporting at all.

Q. Will you please tell the Court in your own words keeping it as briefly as possible what you witnessed personally on Saturday, September 14th.

A. I arrived at the main entrance to the mill yard at about 6:15.

Q. Is that your usual time?

(Testimony of Courtland E. Ashton.)

A. That is my usual time. We begin work at 6:30 and I usually arrive there about 6:15.

Q. You were proceeding to work in the mill at that time?

A. I was proceeding to work and when I arrived there I found the main entrance to the mill yard jammed with cars and many men, some of whom were employees of the mill. I saw Mr. Cheatham's car there—head electrician. I saw the carpenter's car there which Mr. Prueser had been driving, and I would estimate about two hundred and fifty men were flocked around there, around that entrance and also the other entrance which is by the warehouse. As soon as I got out of the car they all began to shout and they were shouting, "We want Ashton." I asked Tom Watt if I may go through. He said, "No, you had better wait a while." I saw two policemen standing there, so I went over and asked the policemen if this road should not be opened and they said they did not know, they had to wait until the chief arrived, so I remained there and the chief did arrive. Later on Mr. Burns arrived and came in the side entrance. He got through the side entrance and he came on through where we were. Nothing else of importance happened. I simply stayed around there. The men were milling around at all times.

Q. You saw no one get in the mill during the time that you were there?

A. No, I didn't see anyone enter the mill.

Q. What was the attitude of the mob that you refer to?

(Testimony of Courtland E. Ashton.)

A. They were calling everyone by name and shouting around there at every one, Mr. Burns included, and they were a truculent [244] mob and it was quite apparent anyone entering there would immediately be beaten. We were challenged to try to go through.

Q. You were also trying to go to work on Monday?

A. Yes, I tried to go. At eleven o'clock on Monday I went down to that same main entrance of the mill yard.

Q. That was September 16th?

A. That's on Monday, September 16th, that's Monday; that was at 11 o'clock. The men crowded out on to the road again and blocked my entrance. I made no attempt to go through. I backed away and went over to the warehouse entrance and tried again. Again they flocked into the entrance and blocked my way, so I backed away from there and tried to go through the side entrance and found a wire across the road there and boxes and barricades, and they also prevented my entrance.

Q. On Monday, the 16th, now, in preventing you from entering, were they on plantation property?

A. Yes.

Q. All of them at all three entrances?

A. They were all on plantation property. As I understand it, that is plantation property as soon as you get off the County road and they were at the entrance.

(Testimony of Courtland E. Ashton.)

Q. They were definitely blocking all entrances to the property?

A. They were blocking all entrances.

Mr. Moore: That is all I have, your Honor.

Q. (By the Court): They were all off the highway then?

A. They were off the highway.

Q. The public highway?

A. They were off the public highway and on the road leading to the mill.

Q. Leading to the mill. Did they indicate by their attitude that they would act violently toward you if you proceeded? [245]

A. They stood directly in front of the car.

Q. And absolutely prevented you from going forward?

A. It would have been impossible for me to go forward without striking one of the men.

The Court: That is all.

MARY SOARES

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you please state your name?

A. Mary Soares.

Q. Where do you live?

A. At Lihue, Lihue camp, plantation camp.

Q. Lihue Plantation camp? A. Yes.

Q. You are a housewife?

A. Yes, I am.

(Testimony of Mary Soares.)

Q. What does your husband do?

A. He is a welding foreman.

Q. This house in which you live is plantation house?

A. Yes, it is.

Q. How long have you lived in this house?

A. About four years now.

Q. Four years. You have any children?

A. Yes, two children.

Q. What are their ages?

A. One is five and one is four. One is five and one is one.

The Court: Will you please speak a little louder?

Q. One is five and one is one?

A. Yes.

Q. Your husband is working now as he has in the past?

A. He has in the past, but at present he is not.

Q. He is not working at present. He is a welding foreman, you say?

A. Yes, he is. [246]

Q. He is not a member of the union?

A. No, he isn't.

Q. Has he been approached by any group to join the union?

A. Yes, he has.

Q. Have they also attempted to interfere with his going to work?

A. Well, not that I know of.

Q. Have they approached him at your home at any time?

A. Yes, when they came over to picket at my house.

(Testimony of Mary Soares.)

Q. They picketed your house? When did that occur?

A. I think that was on a Thursday, if I am not mistaken. Last week anyway.

Q. Will you tell the Court exactly what happened on that day?

A. About eight o'clock in the morning a group of men came down the road, yelling, about twenty-five or thirty men anyway. They just yelled and came up to the house and said, "Is this a scab's house?" And somebody in the crowd answered, "Yes, this is a scab's house." They just hang around and kept yelling and I just went about my work and I had my little girl out in the yard playing and they would call her and say, "Your daddy is a scab." When I went to empty my waste basket in the waste barrel which is out on the road, back road, one of the men came up to me and said, "To think you live in a scab's house." He said, "if I were you I'd run away." And someone else on the side shouted, "What do you mean run away. I'd kill myself." So I just came back and as I was walking in the house someone in front yelled, "Yes, call him a scab, that son of a bitch." After that they just hung around awhile and they didn't bother me any more. That is about all. They left sometime in the afternoon.

Q. You say they were around back of the house also?

A. Yes.

Q. Is that your property back there, I mean as part of your house property?

(Testimony of Mary Soares.)

A. But they were on the road; they weren't in the yard. [247]

Q. That is a plantation road? A. Yes.

Q. And they were along the edge of your——

A. Of the back yard.

Q. Back of your house where you are now living? A. Yes.

The Court: About how many men were there?

A. About twenty-five or thirty men.

Mr. Moore: That is all I have.

The Court: So far, I call your attention to the fact, Mr. Moore, that no one of the respondents has been identified by any of the witnesses?

Mr. Moore: By name?

The Court: By name.

Q. You know that these picketers, as you refer to them—did you know any of them at all, personally?

A. Just the one that swore at my husband.

Q. The one that swore at your husband?

A. Yes.

Q. You know his name?

A. George Miyasaki or something.

Q. Masaki? A. Yes.

Q. You don't know, do you, whether the others—you knew that they were employees?

A. Yes, I do—all employees.

Q. All employees. Were they members of the union, do you know?

A. I am pretty sure they were.

Q. They seemed to be?

A. They seemed to be. [248]

GEORGINA ROSA

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you state your name?

A. Georgina Rosa.

Q. Will you speak up a little louder so they can hear you?

A. Georgina Rosa.

Q. Where do you live? A. Lihue.

Q. Lihue?

A. In front of the theatre, by Dr. Wallis.

Q. What is the name of that road?

A. Just the main road.

Q. The main road down here, the road to Kapaa?

A. Yes.

Q. You are a housewife? A. Yes.

Q. Your husband is employed? A. Yes.

Q. Where? A. Lihue Plantation.

Q. What is his work?

A. He works in the mill—mill engineer.

Q. Mill engineer? A. Yes.

Q. How long have you been living in this house that you are now living in?

A. Oh, about two years.

Q. Two years. It is a plantation house?

A. Yes.

Q. Has your husband been approached to join the union at any time?

A. Yes, they came over and told him to join, but he wouldn't join. [249]

(Testimony of Georgina Rosa.)

Q. Have they taken any further action by way of threats or intimidation to get him to join?

A. They just called him up. They telephoned over to my place at 5:11, five after eleven and they called him but I said he was sleeping.

Q. Have they attempted in any other way to come around the house?

A. They told me that how I like the crowd outside.

Q. A crowd? A. Yes.

Q. There was a crowd outside at that time?

A. That is right, on the Tuesday morning.

Q. Tuesday morning?

A. There was a crowd.

Q. Do you recall the date that would be?

The Court: Was that last week?

A. Last week.

Q. (By Mr. Moore): Tuesday, the 11th, that would be?

A. Yes; then on the 12th they came again.

Q. They came again on the 12th? A. Yes.

Q. How many came?

A. Oh, about hundred something boys in front and back.

Q. In front and back of the house?

A. Yes.

Q. You have a plantation road in back?

A. No. It is a plantation road in the back.

Q. Back of the house. What did the pickets do? You just tell the Court what——

(Testimony of Georgina Rosa.)

A. They just yelled at me, "Scab," calling me scab. "There is a scab in the house; all scabs in the house." And then when I [250] come out they go out and when they relieve themselves they all yell at me and say, "Hey, you scab!" And they out in the road relieving by themselves.

Q. How long were they around?

A. From morning till afternoon.

Q. Did you recognize any of them?

A. No, I don't know.

Q. But they were employees? A. Yes.

Q. You think they were are all members of the union? A. Yes.

Q. The way they talked? A. Yes.

Q. Were you at all frightened?

A. Yes, I was frightened to death. My baby, too, and my auntie.

Q. You have a baby? A. Yes.

Q. How old? A. Two years old.

Q. And your auntie, you say?

A. My auntie from Honolulu. She is going to leave on Sunday. She was at my place all frightened; she was just trembling.

Q. Did they shout and holler quite a bit?

A. Yes, they shouted. Every time when I come out they shout, "Hey, you scab! Get in the house. You are living with a scab. Not ashamed living with a scab?" Then my little children come from school they just sit down there. They won't give room. They just creep to the steps to come in and out. My little boy is seven years and the little girl

(Testimony of Georgina Rosa.)

is twelve and other one is fifteen. They just yell at them, "You scabs! Get in the house. You scabs!"

Q. Did you call the police at all?

A. Yes, I called the police. [251]

Q. What happened then?

A. My auntie was on the porch and I was in the parlor by the window and there was a boy that threw a paper in the yard and then I called the policeman, and I told the policeman if they could throw paper in the yard and he said no. So I said there is a boy that threw a paper in the yard. The policeman just came out and he said, "Where is the paper?" I showed him where was the paper and he just picked it up, and all the union men all came altogether on the road. The policeman was talking to them and the boy was talking to the policeman. I don't know what they said. Then the policeman took the paper and put the paper in the pocket and went away.

Q. Did that police try to break up the picket?

A. No, he just went in the car. When the policeman came down on the road they all yelled, "Hey, you scab, you boto boto," calling me names. Why I call the policeman, for nothing?

Q. After you called the police they called you names for calling the police? A. Yes.

Q. They did?

A. They called me names, "boto boto," their language, and they told me, "Get in the house; we come again tomorrow."

(Testimony of Georgina Rosa.)

Q. They told you to get in the house?

A. Yes.

Q. How long did that go on?

A. From the morning from seven until 3:30.

Q. From 7 until 3:30? A. Yes.

Q. How many—what did you say the numbers were? A. About hundred something.

Q. They kept that up all day long?

A. Yes, all day, front and the back.

Mr. Moore: I believe that is all, your Honor.

The Court: That is all. [252]

WILLIAM A. H. BUDDINGH

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you state your name to the Court?

A. William A. H. Buddingh.

Q. Where do you live?

A. I live in Lihue.

Q. You are employed?

A. I am employed by the Lihue Plantation.

Q. In what capacity?

A. Chief engineer.

Q. That is, chief engineer at the mill?

A. At the mill, that is right.

Q. You have been trying to go—you have been seeking to work recently, the last few days?

A. Not the last few days, not since Saturday morning.

Q. Not since Saturday morning?

(Testimony of William A. H. Buddingh.)

A. Since Saturday morning I have not been able to get into the mill.

Q. You were not able to get into the mill Saturday morning? A. No.

Q. Will you please tell the Court, briefly, just what you witnessed?

A. I arrived at the mill early Saturday, because I was notified that mass picketing was going to occur at the mill. At four o'clock in the morning I arrived at the mill and there was no picketing of any extent being done at that time. I went outside the mill and went into the garage and was talking to Mr. Tester and Mr. Langley and Joe Travasso, together with the two watchmen who were on shift at the mill. After a while, while we were talking, a mass of pickets formed a line from the garage to the warehouse; after which I talked to Tony Camara, who was one of the watchmen, for us to go inside and see how the other side of the mill was getting along. Well, I never got inside because I was stopped [253] by a solid line of pickets, say, anyways from five to six deep, maybe more, five to six deep, shoulder to shoulder, barring my way to the factory.

Q. Did you recognize any of them?

A. I did not recognize very many of them. Most of them were off plantation men as far as I can determine.

Q. Some of them were employees?

A. Some of them were employees, definitely, but the men who actually tried to stop me I did not recognize as plantation men.

(Testimony of William A. H. Buddingh.)

Q. Known to you as union men?

A. Known to me as union men because all wear their badges.

Q. All were wearing their badges?

A. All were wearing their badges.

Q. What badges? A. CIO.

Q. CIO? A. That is right.

Q. ILWU?

A. ILWU. Some of them are white, some of them are orange.

Q. Did they threaten you?

A. They did not threaten me, because they just told me I could not get through. I asked them to get through. I even made the statement, "Come on, boys, sorry because you can't stop us out here." I was very much booed about the statement, "Come on, boys." "Now you call us boys, other times you threaten us."

Q. Did you attempt to get through?

A. I attempted to get through on two different occasions.

Q. What happened? A. I was stopped.

Q. How were you stopped?

A. By the shoulder movement.

Q. Shoulder movement?

A. Shoulder movement. The men were line in line and I was walking [254] into the line with my arms crossed in front of me, trying to push myself through, but I was not able to get through.

Q. Pushed back? A. Pushed back.

(Testimony of William A. H. Buddingh.)

Q. From that, your conclusion was that neither you nor anyone else was going to get into the mill; that was the attitude——

A. That was the attitude I definitely got.

Q. This attempt to get through and in which you failed because of the force used against you on that, was that on plantation property?

A. It was on plantation property, yes. The line was on plantation property. As a matter of fact we were on plantation property before we proceeded into the line, but it was outside the line.

Q. Did you see any so-called union representatives around at any time? A. Not until later.

Q. Who did you see?

A. I saw Morimoto and George Masaki and William Paia.

Q. William Paia? A. William Paia.

The Court: What was the first name you mentioned?

Mr. Moore: Morimoto.

A. Morimoto.

Q. The picketing continued after they arrived?

A. Picketing continued, yes.

Q. They did not—in other words, it did not change at that time?

A. No, it didn't, the pickets remained all the time.

Q. Still preventing access to the mill?

A. Still preventing access to the mill, because each time we would try to walk toward the other entrance, the whole mob would follow us and much booing and catcalling, and so forth and so on, occurred during that period [255]

(Testimony of William A. H. Buddingh.)

Q. Did you attempt to get into the mill on Monday?

A. On Monday, yesterday, I attempted to get into the mill at around 11 o'clock. I drove my car right up to the picket line and was stopped at the south gate, that is, the main entrance of the mill. About 15 to 20 pickets refused me entrance to the mill. After which I went to the warehouse entrance and was again refused. As a matter of fact, one of the pickets put a "Respect the Picket Line" sign right in front of the car which I would have either had to run over or break down if I proceeded.

The Court: By what was that?

A. Picket sign reading, "Respect the Picket Line." After that we went to the side entrance of the mill near the main road where Olin Parias lives and tried to get through again. We found—I say "We" because Courtland Ashton was following me with his car. Two cars were going down that way. Personally, I found this road blocked by a wire strung across the road and benches placed underneath the wire, refusing us entrance. One of the boys who had refused us at the main entrance of the mill was Karimoto, who is employed in the factory at the sugar warehouse, refused entry at the main gate and also he went through the mill site to the other entrances and stopped us again.

Mr. Moore: That is all, your Honor.

The Court: It was Takemoto, you said?

A. Karimoto.

The Court: No questions.

JAMES P. LANGLEY

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you please state your name?

A. James P. Langley.

Q. Where do you reside?

A. I live at Lihue.

Q. Lihue. You are employed?

A. Employed as division overseer for The Lihue Plantation Company, Limited. [256]

Q. You have been working?

A. I have been working here since 1931.

Q. In the last few weeks you have been at work?

A. Yes.

Q. Every day? A. Every day.

Q. Have you any others working with you, as division overseer?

A. No, I am the only division overseer on this side.

Q. You are? A. Yes.

Q. The employees are out on strike?

A. The employees are out on strike.

Q. You have—in other words, your lunas have no men working for them?

A. No men working for them. The men that were working signed up with the union.

Q. Will you tell the Court, Mr. Langley, what efforts you have made to perform your work and what has developed with reference to that in the last few weeks? Just briefly without getting too deep into it? A. Yes.

(Testimony of James P. Langley.)

Q. You don't need to specify dates unless you recall them specifically.

A. Yes. The first trouble that came to my attention was on September 2d. Mr. Burns, manager of the Lihue Plantation Company, stopped by my house in the morning and told me that water was overflowing on the road below one of my fields, so I went up there right away and checked for myself and, sure enough, below Lihue Field 3-A on the road there was covered with water. Then I investigated the water gates and found that several of the water gates had been tampered with—off the main ditch—the water going into the field and then overflowing from the field onto [257] the road. I adjusted these gates and put them back in order and returned home. Then, on resuming work with the lunas on the third, I told my makai section luna, Joe Amaral, that water coming through the mill and goes down to the makai field should be thrown into the field rather than be wasted. This was done. Then, on one of those day that week one of my section water foremen, Augustin Lomigkit, reported to me that a car had driven down in the morning—occupants, one of Japanese ancestry and three or four Filipinos—told them that the water shouldn't be thrown into the cane. Then that same afternoon Joe Amaral told me that someone had visited his house the previous evening and advised him not to put water on the cane. He acted accordingly.

Q. You know who visited his house; did he tell you? A. He did not.

(Testimony of James P. Langley.)

Q. It was a threat to him not to turn water in the——

A. It seemed to be that, yes.

Q. Did he identify them as union men?

A. It must have been strikers.

Q. Did he tell you that?

The Court: The Court will rule that out. It would be hearsay anyway.

Q. Proceed with your story.

A. This Joe Amaral, he acted accordingly and he himself said that and that he would not throw any more water himself. Then on the morning of the fifth, I myself went down to Lihue Field 35-B and dropped in a water gate there. You might say this water was coming from the overflow of what's known as our Field 20 Reservoir. I put this water in so it wouldn't be wasted. That morning, about 9:30, one of my irrigation foremen, H. Kagehiro by name, reported to me that while he was on his horse coming along the railroad track he had seen a car stop there, but he was at such distance that he couldn't recognize [258] the parties. The water gate was taken out. This he said he didn't see himself being taken out, but reported to me it was taken out. So I went down there myself and checked and found that the water gate had been taken out. I searched around, but couldn't see the—find the gate, so I reported these incidents to our manager, Mr. Burns, and Mr. Tester, assistant manager.

Q. In other words, throughout those days your efforts to water the fields to the extent that you attempted to were interfered with?

A. Yes.

(Testimony of James P. Langley.)

Q. Did they—did any of the union men approach you at any time concerning the irrigation, either personally at your home or otherwise?

A. None of them did approach me, personally.

Q. Was your house picketed in any way?

A. My house was picketed on Saturday of September 7th. I came home for breakfast and I got into the house. Since I went in the front room I noticed in front of my yard beyond the hedge a group of men, which I realized instantly that I was being picketed. I stayed within the house awhile, then went out in the yard and while I was out in the yard they yelled, "Langley, scab. Go to your fields. Go hanawai. Come out." After an hour or so at home, I did drive out of my yard. They didn't stop my passage, but they moved toward me and catcalled me.

Q. Did you recognize any of them?

A. I did.

Q. Were they wearing union badges?

A. I believe so, which ones I couldn't say.

Q. You recognized them as employees, some of them?

A. I did.

Q. Are they in the union, you presume?

A. Yes.

Q. Were you otherwise threatened or any other intimidation?

A. Yes. [259]

Q. Without explaining in too great detail, when did that occur?

A. That occurred that same day in the afternoon when I left my home after lunch. I drove

(Testimony of James P. Langley.)

down the hill towards the post office and as I drove down I was followed by another car and I realized that I was being followed. I turned into the post office and went over to the plantation office outside on the veranda and talked with Mr. Baldwin, the division overseer of Hanamaulu. I remarked to him that that bunch is following me.

Q. Did you recognize any of them?

A. I did.

Q. Who were they?

A. The one who was driving the car was John Leonard Costa.

Q. An employee?

A. He is an employee of the Lihue Plantation Company. And there were two Filipinos.

Q. Two Filipinos? A. Yes.

Q. Did you notice whether they had union badges?

A. I believe one of the Filipinos had a union badge.

Q. Are they otherwise known to you as members of the union? A. Yes.

Q. They followed you for some distance?

A. Then I came out, went back to my car and drove into Mr. Seaton's yard and went in and had a talk with him for a few minutes. While I was in there they drove on out in the back here, across from the—near the tennis court. Then I came out of Mr. Seaton's house with him and went up to my house again and they followed on behind us and I was in my house for a few minutes and we came out

(Testimony of James P. Langley.)

again. We were followed on down. I came to the office and reported the incident to Mr. Tester, assistant manager, Lihue Plantation Company. I parked in the back of the office. While I was parked there, they stopped [260] their car there, on this side of the tennis court. Then we drove out onto the highway with Mr. Seaton and Mr. Tester. I drove down by the overpass here, just below the hotel, and turned into one of my or our plantation roads, drove a little distance in and this car followed inside and when he was well inside we stopped. Mr. Goodale Moir's car behind this Suki—as I call him—Costa, but his common name is John Leonard Costa. I stayed in my car and Mr. Tester went back and questioned these parties. Then Mr. Tester went and called the police and police came. I remained in my car and then came out and passed this car with Costa and the two Filipinos and went over toward where the officers and Mr. Tester were. Then I took my car and drove on. We turned around and returned with the police to the headquarters. I didn't hear anything what happened after that incident.

Q. From all that happened on that, you have every indication to believe that it will continue, such attempts to interfere with your work?

A. I believe so.

Q. So that, in effect, you cannot do much in the fields? A. That is what I feel.

Q. Have many of the men working under you been intimidated to the point where they will not work or they do not come to work at all?

(Testimony of James P. Langley.)

A. The supervisors have—many of them have joined the union.

Q. They are not coming to work?

A. They are not coming to work.

Mr. Moore: That is all I have, your Honor.

The Court: That is all; no questions.

LEONARD T. CANNON

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you state your name?

A. Leonard T. Cannon. [261]

Q. You reside here? A. In Lihue.

Q. You are employed?

A. By the Lihue Plantation Store.

Q. In what capacity?

A. Assistant manager.

Q. Your employees, the ones working under you, are out on strike? A. They are.

Q. Strike called by the ILWU, so far as you know? A. So far as I know, yes.

Q. Has the store been operating?

A. In a very limited way. I personally have been selling to six accounts perishable merchandise only. Six accounts are four local restaurants and the two hospitals.

Q. Has the store been—have you been prevented from opening the store? A. Yes, we have.

(Testimony of Leonard T. Cannon.)

Q. In what way has that occurred?

A. Mass picketing at all of our front doors and at the road leading from the main road to our back entrance. I believe the only ones permitted in have been the six that we are still attempting to serve.

Q. That is by enforcement of the union and picketers?

A. Yes. The roads are blocked and no one has been permitted to come behind the store with the exception of the six. And today a man from Wai-mea, who has always purchased from us and whom we sold a few perishable items to last week, came in and they ordered him out. That was about 11:30 today.

Q. 11:30 today?

A. Yes. They informed us there are only three people permitted to be in or around Lihue Store. They did not name the three, but I assume that it's myself, Kaoru Fujii, my cashier, and Willie Albao, the office manager, because the three of us have been permitted to enter, today.

Q. That is all? A. That is all.

Q. Were any denied entry yesterday?

A. Yes.

Q. Who?

A. U. Ishii, manager, hardware department; Mr. A. G. Hutton, manager of the dry goods; Harry Nogami, our maintenance foreman, who is in charge of our refrigerators; and Joe Rapozo, who is in charge of the home appliances.

(Testimony of Leonard T. Cannon.)

Q. You witnessed their efforts to get in?

A. I did.

Q. You saw them stopped?

A. I saw them stopped, and I asked our maintenance man to try to come through again, because of the nature of his work. He is also in charge of the night watchmen. And about 9:30 he attempted to come in again and they refused him admittance and told him to get out.

Q. They did? A. Yes.

Q. There have been pickets in front of the doors of the house? A. There have.

Q. They have. In front of the doors of the store, rather. They have prevented anyone from attempting to get through there?

A. That is correct. A week ago Monday, which I believe was the 9th, they warned me on Saturday that I would not be permitted to come through; that they were going to form a wall of pickets several deep, shoulder to shoulder, in front of the doors and if I wished to come in through the front door it would be necessary to get a policeman before they would disperse.

Q. The police did not disperse them this morning?

A. To my knowledge, they have not dispersed anyone and they are there at present. [263]

Q. These persons are all members who are preventing access, you recognize any of them?

A. A great many of them, yes.

Q. As your employees?

(Testimony of Leonard T. Cannon.)

A. As our former employees and also mill employees and field employees.

Q. You recognize them as a members of the union.

A. Only by the buttons they have on their clothing or the union police or union picket bands that they have on their arms.

Q. Some of your employees who were working in the store, they have been members of the union for some time?

A. I am not certain of that, although I believe they have. We have not discussed it with them.

Q. In other words, from all that transpired you are not able to operate the store even if you so desire?

A. We could not.

Q. You could not operate it anywhere near normal operation?

A. It is utterly impossible with three men. That is all they will permit.

Q. Will this result in considerable damage on that refrigeration that you have, etc.?

A. Definitely. Unless something is done in the very near future we are going to loose a lot of merchandise. In fact I had an appointment at 1:30 with Sonny Lyons. He is going to choose to condemn a lot of merchandise today.

Q. Perishable merchandise?

A. Perishable merchandise.

Q. Lost because of this situation.

Mr. Moore: That is all.

The Court: That is all.

KEITH B. TESTER

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you please state your name to the Court?

A. Keith B. Tester.

Q. You reside here in Lihue? A. Kauai.

Q. You are employed?

A. Yes, by the Lihue Plantation Company.

Q. In what capacity?

A. Assistant manager.

Q. Assistant manager. The employees are not out on strike? A. Yes.

Q. Since what time?

A. Since September 1st.

Q. That strike was called by—

A. Called by the ILWU, Local 149.

Q. This is Unit 1 of Local 149?

A. Units 1, 2 and 3.

Q. 1, 2 and 3? A. Yes.

Q. That is part of the Local 149? A. Yes.

Q. So far as you know? A. Yes.

Q. That in turn is International Longshoremen's and Warehousemen's Union? A. Yes.

Q. You have not been operating the mill except with a few employees?

A. Yes, with—oh about a dozen supervisory employees.

Q. Supervisory employees. Have they had any difficulty recently in getting into the mill?

A. They had difficulty last Saturday morning.

(Testimony of Keith B. Tester.)

Q. Saturday morning? A. Yes. [265]

Q. You were present at that time?

A. Yes, I was present.

Q. Did you attempt to get in?

A. No, I didn't attempt to get in.

Q. Did you see—they were stopped, the employees were stopped and prevented from going in?

A. Yes, they were stopped.

Q. By whom?

A. By members of Local 149.

Q. Did you see any union representatives present at that time?

A. Yes, I gather they were all union representatives or union members, but I saw somebody I know in particular.

Q. Could you state their names?

A. George Masaki, Ronald Toyofuku, Akama, Morimoto.

The Court: Just a minute. Morimoto?

A. Yes. Hamamoto, from Hanamaulu. A good many more, but I just can't recall them.

Q. You recall Paia?

A. Paia, yes; I was talking to him.

Q. What about——

A. I also saw Shimizu.

Q. Nunes? A. I don't recall seeing him.

Q. Rapozo?

A. No, they may have been there. I don't recall seeing him.

Q. Fontanilla?

A. No, I don't believe I'd know him if I saw him.

Q. Takemoto?

(Testimony of Keith B. Tester.)

A. Yes, I saw him. No, I don't believe I did see Takemoto. He may have been there, but I don't recall seeing him.

Q. But you know Nunes, Rapozo and Fontanilla as officers of the local? [266] A Yes, yes.

Q. You have had occasion to deal with them in the past?

A. Yes, we recognized them as officers of the local.

Q. Recognized them? A. Yes.

Q. They presumed to represent the local labor organization? A. Yes.

Q. The picketing and all this mass picketing and prevention of entry into the mill occurred in your presence, the ones you have named? A. Yes.

Q. With reference to the activities of the police that morning did you witness Mr. Burns discussing that? A. Yes.

Q. Attempting to get enforcement?

A. Yes, I was with him while he talked to them.

Q. You overheard what he said?

A. Yes. In fact I came up here and called the police originally. I came up to the County Building and oh probably five minutes after that one police officer arrived. Within a period of maybe oh fifteen minutes or twenty minutes they all arrived with the exception of the assistant chief. And later on he arrived and again later on after that the chief arrived.

Q. Did you overhear Mr. Burns discussing it with——

(Testimony of Keith B. Tester.)

A. Yes, I think a couple of times that the chief was talking with the group of union men. I believe Morimoto was in the group, at times Paia. Their picket chairman was there. I think it was George Masaki. Barbosa, I saw him in the group. I think there were six or eight of them to whom he was talking. Before going over myself, Mr. Burns had gone over two or three times and spoken to the chief. I don't know what he said there, but at one time he and I both went over there and Mr. Burns asked him what he was going to do about it and he said—told him to wait. [267]

Q. Told him to wait?

A. Told him to wait, yes. And the union boys rather objected to he and I standing around while they were discussing it and asked the chief if we could be requested to leave and a few minutes later—a few moments later—the chief told us we had better leave. Some time after that Mr. Burns and I again went over and Mr. Burns asked the chief then. He said, "I request to have this road opened up for our employees and the public." And again the chief told us we had better wait a while.

Q. Told you what?

A. We had better wait a while. And some time after that the chief wanted to speak to Mr. Burns and he called myself and Rockwell Smith. I believe the two of us were there while the chief was talking to Mr. Burns. At that time the chief said that after his discussion with the union members they were willing to permit certain specified persons through the picket line. I believe he stated Mr. Burns, my-

(Testimony of Keith B. Tester.)

self, Tom Watt and perhaps Rocky Smith. He is the industrial relations director. Mr. Burns then told him that he wanted the road open for——

Q. Everyone.

A. Everyone. After that, why, the chief said that the union just wouldn't let them and he said if the others attempted to go through there would be bloodshed. As a matter of fact, it looked to me like a match or anything would have flared that up. They were in very bad temper at that time. I remember Mr. Burns also said to the chief if they state there is liable to be bloodshed it would seem to him that it would be a wise thing to get enough police around so that they could be sure there wouldn't be any violence and open up the road and let the people go through.

Q. The roads have not yet been opened up?

A. The roads have not yet been opened up. [268]

Mr. Moore: That is all, your Honor.

Q. (By the Court): Is there any equipment in the mill or any machinery that needs immediate attention?

A. Well, there is—yes, I believe our crystallizers are going unless—they may have stopped them in the morning, early Saturday morning, before they left the mill, but all the power lines are tied up in the power house, and it's absolutely essential that those are looked after. The two hydro plants tie into Lihue power plant here.

Q. Who ordinarily gives attention to the crystallizers?

A. Mr. Ashton.

The Court: That is all.

CHARLES JAMES FERN

having been duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you please state your name?

A. Charles James Fern.

Q. You reside here? A. In Lihue, yes.

Q. You were in the vicinity of the Lihue Mill on Saturday morning, September 14th?

A. I was.

Q. You witnessed mass picketing there?

A. I did.

Q. Did you witness any union representatives present?

A. Yes, I saw quite a few of them. William Paia, who is President of the union; Yoshikazu Morimoto, who, I believe, is Secretary-Treasurer of the island-wide unit. There was George Masaki, Teru Akama, Jerry Matsuyama and several others that I am not—quite a few others that I am not sure about their names.

Q. They were present while this mass picketing was going on? A. Yes. [269]

Q. No one was getting into the mill, none of the employees attempting to get in the mill at that time?

A. The employees were standing up the road quite a distance from the group of picketers that were massed across the road.

Q. Did you ever hear any of the conversation of the union men concerning what action they might take?

(Testimony of Charles James Fern.)

A. When I got—I first got there, I stopped at—Mr. Burns was up the hill a ways and I stopped and asked him what was going on. He suggested I see the chief of police, so I drove down a bit and parked my car and got out of the car and walked over where Chief Crowell was consulting with this group that I have named. They were all squatted down and the chief was saying to them—just as I got there the chief said to them, “Now, you boys know that this is one of the things that in a conference with the County Attorney you were told could not be permitted; that you have to let people in and out of private property.” There was no answer whatsoever from the group. They didn’t say aye, yes or no. And then Chief Crowell said to them, he says, “I would like you fellows”—this is roughly his conversation—“I think you fellows ought to clear this road and disperse.” And Morimoto stood up and said, “I have to make a phone call first,” and he went away. He walked over toward the warehouse and where he went from there I don’t know. And then the group broke up and I spoke to the chief. I said, “What’s the phone call?” and I inferred from what he said or understood him to say that he was going to call Honolulu. Then fifteen or twenty minutes—I don’t know how—there was so much doing it was hard to keep tract of time—Morimoto came back and he met with some of the leaders and there was great activity going on.

Q. Among the union?

(Testimony of Charles James Fern.)

A. Among the union. They began calling union police this way, line up here boys, with the union police in front. And somebody [270] came down with a camera and they wanted a picture of the picket line. Somebody got on top of the little fire house there and they began lining them up I think for the picture as much as to hold the line. So there was quite a bit of organized work as far as dispersing the men over toward the warehouse and orders were being issued. And finally they seemed to get set as to what they wanted to do. In the meantime Mr. Burns had come over to the police—chief of police—and told him that the situation was rather tense, he felt, and he was sending the men home, because he felt it would ease the situation, but he told the chief that “when you are ready to enforce the law, I want these men to go in the mill.” And then the supervisors all left there amid boos and catcalls, and after that it quieted down.

I noticed Morimoto standing on the, say the makai side—makai end—of the line, that is, near the stream. I walked over to him and I said, “Is this the result of your phone call to Honolulu? Have you been instructed to hold the line?” And he says, “Yes, we are holding the line.” And so I walked out and watched them develop.

I went over to Chief Crowell and asked him, “What’s the score now?” He said—well he said—called to Captain Fernandez, Assistant Chief Fernandez, he said, “You go get Keahi and tell him”—I think he said—“to bring the riot act with him.”

(Testimony of Charles James Fern.)

So I said, "You are going to read the riot act to him?" He said, "Well, Mr. Tavares told me that in cases of this kind where the riot act has to be read to make them disperse that I should have the district magistrate do it." So Mr. Fernandez left and then there was no—it was rather quiet for a while. And then the County Attorney came along in his car. He stepped out of the car and had a conference with Mr. Crowell and I stepped down and joined them while they were conferring and I heard the [271] County Attorney tell Mr. Crowell, "You can't do a thing. You can't escort anybody through the picket line. You can't clear the road. You can't do anything until they slug somebody." Then Crowell turned away and I asked him what he was going to do. He sort of made a motion—no, no, Crowell asked to be excused then, that he wanted to confer privately with the County Attorney and I walked away. And then later, I saw Mr. Crowell and I asked him what he was going to do and he just shrugged his shoulders and didn't have any further comment. And then I went over and used the phone. When I came back it was about ten minutes past nine. They were still massed there but there was no excitement, so I decided to go back to my office.

Q. This Morimoto and various other names you mentioned, they were wearing union badges?

A. I didn't notice. I noticed some of them had arm bands on, but——

(Testimony of Charles James Fern.)

Q. You know them as members of the union?

A. I know that Mr. Morimoto is Secretary-Treasurer. I know Mr. Paia is the President of the local union, that is, the Kauai Unit.

Q. All of this continued after they had, from your information, talked to Honolulu?

A. All this development of—the thing was more or less unorganized before Morimoto came back. There was a good deal of cheering and catcalling but there was no organized massing or anything else, they were sort of milling. Nobody was attempting to go through the picket line and no one was apparently trying to stop anybody, but when Morimoto came back he went over directly. I didn't see him talk to Chief Crowell at all. I don't know where Crowell got the message of what the result was, but when Morimoto came back, then there was a good deal of shouting and captains this way and things like that, union police this way, and I know they were running around. One of the men that was carrying [272] a union police captain badge—I don't know his name—was running and handing these badges to various people and I heard him say, "All right, line up the union police in front."

Q. And they proceeded to do that?

A. Yes.

Mr. Moore: That is all, your Honor.

Mr. Kaulukou: I offered my services as amicus curiae in this matter. I would like to ask a few questions of Mr. Fern.

The Court: As an amicus of the Court you may do so.

(Testimony of Charles James Fern.)

Mr. Kaulukou: I would like to ask one question. Did you actually hear me use the word "slug"?

A. That is what I understood you to say. You might——

Mr. Kaulukou: I am asking you whether you heard me use the word "slug" or is that your idea of my position amounting to something in violation of our statutes? I don't remember using the word "slug" at all.

A. It might have been something else, but I know it ended on someone. It might have been "slug," it might have been "hit," it might have been "hurt." I am not certain on the slug, but that is what I understood you to say. I don't know that I have ever heard you use that word, very frankly, but that was just the impression that I got out of it.

The Court: The impression you got out of it, Mr. Fern, was that the County Attorney advised the Chief of Police he could take no action unless there was an overt act; is that it?

A. That's it, exactly.

Mr. Moore: That is all.

The Court: That is all.

(Court recessed at 1:25 p.m. and reconvened at 3:03 p.m.)

The Court: You are recalling Mr. Tester, are you?

Mr. Moore: I am calling Mr. Tester.

The Court: Mr. Tester has already been sworn. You may proceed. [273]

(Testimony of Charles James Fern.)

Direct Examination

By Mr. Moore:

Q. Mr. Tester, can you identify this letter?

A. Yes, this is a letter from Y. Morimoto as the business agent of the ILWU, Local 149. It states on the letter: Will you please recognize the following 1946 officers of Local 149 Unit 1:

President, Joseph Nunes; 1st Vice-President, Daniel F. Rapozo; 2nd Vice-President, Fernando Fontanilla; Recording Secretary, Tom Takemoto; Financial Secretary, Sunao Iwamoto.

The Court: Is that S-u-n-i-o or S-u-n-a-o?

A. S-u-n-a-o.

Q. This letter was received by the Lihue Plantation Company; this is the file copy?

A. Yes, this is the file copy.

The Court: You are not offering this in evidence, are you, or——

Mr. Moore: We can do that. We can offer it in evidence. That is the last communication we had from the union. Of course, at all times union officers are subject to change and we can go only on our knowledge of the latest communication they send.

The Court: It will be accepted in evidence and marked Petitioner's Exhibit—next in order. What will that be?

The Clerk: 24.

The Court: Exhibit 24.

(Testimony of Charles James Fern.)

Q. These officers to your own knowledge have participated actively in the affairs of Local 149?

A. They have, yes.

Q. They have been present at meetings that you have had? A. Yes.

Q. Management and the union? A. Yes.

Q. You have recognized them? A. Yes.

Q. As the officers? [274]

The Court: The Court is satisfied that the petitioner has made a prima facie showing warranting the issuance of an order to show cause.

The Court further finds that the instant matter is very similar to the case of Westinghouse Electric Corporation v. United Electrical, Radio & Machine Workers of America (CIO) Local 601, et al., as set forth in the opinion of the Supreme Court of Pennsylvania, recorded in the advance sheets of Atlantic Reporter, 2d Series, the citation being 46 A. 2d No. 1, at page 16 et seq.

In this instance, the Court is satisfied that there has been a prima facie showing that the respondents in this case, The Lihue Plantation Company, Limited, Petitioner, v. International Longshoremen's and Warehousemen's Union (CIO), Local 149, and others, have exceeded the bounds of peaceful picketing, in that they have prevented the employer, through its supervisory employees and its chief executive as he may be called—general manager—from entering at will the sugar factory, or that which is called the mill, of the plantation corpora-

(Testimony of Charles James Fern.)

tion; also, that the respondents have prevented free access to the general merchandise store known as the Lihue Store of The Lihue Plantation Company, Limited, and in effect have taken possession and control of both the factory and the store; and they have also been guilty of mass picketing and the use of intimidation.

As was said in the Westinghouse Electric Corporation case by the Supreme Court of Pennsylvania: "Freed from the restrictions imposed by the Labor Anti-Injunction Act"—which, presumably, was the Pennsylvania Act; there is none such in this Territory—"there is no doubt that plaintiff is entitled to an injunction in this case" in accordance with the *prima facie* showing made in the instant matter. "The Court is not unmindful of, and certainly not unsympathetic with, the trend which has developed in connection with the issuance of injunctions in labor disputes from the days when even peaceful picketing was enjoined to the present time when the Norris-LaGuardia Act" . . . "declared current public policy with respect to that subject."

Again quoting and adopting the language of the Supreme Court of Pennsylvania: "But picketing to the extent to which it is designed to seize and in effect does seize and hold the employer's plant by the methods here employed does not fall within either constitutional, statutory, common law or equitable protection."

(Testimony of Charles James Fern.)

This chancellor feels that the petitioner herein has shown satisfactory *prima facie* evidence of irreparable damage, not because of any destruction of or injury to its plant, but because of the interruption of vital activities necessary by way of preparation for future business and production; and, in the instance of the Lihue Store refrigerating plants, it has shown further *prima facie* that serious loss may be sustained and if not enjoined may continue, the amount of which may not be determined at present and cannot be taken care of by compensatory damages.

To that extent the Court makes this finding that there has been a sufficient showing preliminary to the issuance of an order to show cause, as prayed for in the petition for an injunction herein.

The Court: You have an order to show cause to present at this time?

Mr. Moore: Yes, sir, I have.

The Court: What is your desire, Mr. Moore—to have the order to show cause returnable in ten days?

Mr. Moore: Ten days is our desire, yes.

The Court: You have a motion for a temporary restraining order at this time?

Mr. Moore: I do. [276]

The Court: To present in connection with the order to show cause?

Mr. Moore: I do.

The Court: You wish to file this motion at this time?

Mr. Moore: I do.

(Testimony of Charles James Fern.)

The Court: Presumably, if the petition to issue a temporary injunction—a motion—is entertained, there should be copies which could be served on the respondents, together with the order to show cause.

Mr. Moore: I have drafted, your Honor, for your consideration, a proposed temporary restraining order.

The Court: You desire that considered in connection with the order to show cause and the motion for temporary restraining order; is that it?

Mr. Moore: That is right.

The Court: That is a matter for the Court's attention alone. This hearing will therefore be closed.

(Court adjourned at 3:17 p.m.)

I Hereby Certify that the foregoing is a full, true and correct transcript of my shorthand notes of the evidence adduced at the hearing had on September 17, 1946, in Equity No. 120.

/s/ KENICHI UMEMOTO,

Court Reporter.

[Endorsed]: Filed July 21, 1947. [277]

In the United States District Court for the
District of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
of the Fifth Judicial Circuit of the Territory
of Hawaii; and C. NILS TAVARES, as Attor-
ney General of the Territory of Hawaii,

Defendants.

ANSWER TO COMPLAINT
OF C. NILS TAVARES, DEFENDANT

C. Nils Tavares, one of the defendants in the
above-entitled cause, answering the complaint
herein, hereby adopts as his answer to said com-
plaint the answer made and filed for and on behalf
of the Honorable Philip L. Rice, Judge of the Cir-
cuit Court of the Fifth Circuit, Territory of Hawaii.

And further answering said complaint, said de-
fendant alleges that he is no longer Attorney Gen-
eral of the Territory of Hawaii, having resigned
from such office on the 30th day of June, 1947.

Dated at Honolulu, T. H., this 21st day of July,
1947.

/s/ RHODA V. LEWIS,

Acting Attorney General,

Attorney for Defendant.

[Endorsed]: Filed July 21, 1947. [279]

[Title of District Court and Cause.]

MOTION FOR HEARING AND DETERMINA-
TION OF DEFENSES BEFORE TRIAL

Come now Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit, Territory of Hawaii, and C. Nils Tavares, the defendants in the above entitled cause, and show to the Court that in the answer made and filed herein for and in behalf of said defendant Philip L. Rice, which answer was adopted by said defendant C. Nils Tavares, the following defenses were pleaded in paragraphs XXV to XXX, inclusive:

“XXV.

“The complaint fails to state a cause of action for equitable relief in that criminal proceedings in the course of which and on review of which all defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

“XXVI.

“The complaint fails to state a cause of action for equitable relief in that it appears upon the face of the complaint that it seeks to stay proceedings pending in a circuit court of the Territory, [281] and that the case does not relate to any proceeding in bankruptcy.

“XXVII.

“This court has no jurisdiction to issue an injunction against the judge of a circuit court of the Territory of Hawaii.

“XXVIII.

“The judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain further proceedings in an action pending before such circuit court.

“XXIX.

“The complaint fails to state a cause of action for equitable relief or any other relief.

“XXX.

“The complaint fails to state a cause of action in that, as appears on the face of the complaint, the amended temporary restraining order issued in that certain equity action numbered 120, appended to the complaint, was issued by the Honorable Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit, Territory of Hawaii, in the exercise of his powers as a circuit judge at chambers of the Territory of Hawaii.

“That a Circuit Judge at Chambers of the Territory of Hawaii, pursuant to the Hawaiian Organic Act and the laws of the Territory of Hawaii, is a court of general jurisdiction with full equity powers and that its orders must be obeyed by persons subject to the jurisdiction of said court, until and unless set aside or reversed; that this is true whether or not the action of the court in issuing said amended

temporary restraining order was erroneous; that the said Circuit Court has jurisdiction to determine its own jurisdiction, and that violations of its amended temporary restraining order constitute criminal contempt irrespective of the ultimate disposition of the questions relating thereto raised herein by the plaintiffs' first and second causes of action, based on the Norris-La Guardia and Clayton Acts; that the said Circuit Court has jurisdiction to determine questions of constitutional law, with power to issue an ex parte order for the purpose of preserving rights alleged to be unlawfully invaded to the irreparable injury of the petitioners in the territorial court, pending the return on the order to show cause why an injunction should [282] not issue; and that violations of the amended temporary restraining order issued by defendant constitute criminal contempt irrespective of the ultimate disposition of the questions raised herein by plaintiffs' third and fourth causes of action, based on the Norris-La Guardia and Clayton Acts and the Constitution of the United States."

Wherefore, defendants pray the Court to hear and determine the above defenses before the trial of the principal case pursuant to the provisions of Rule 12 (d) and to dismiss this suit as to both defendants.

Dated at Honolulu, T. H., this 22nd day of July, 1947.

/s/ MICHIO WATANABE,
Deputy Attorney General, Territory of Hawaii,
Attorney for Defendants.

NOTICE OF MOTION

To: Harriet Bouslog and Myer C. Symonds,
Attorneys for Plaintiffs:

Please take notice that on Monday, the 28th day of July, 1947, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, at the courtroom of the United States District Court for the District of Hawaii, Federal Building, Honolulu, T. H., the foregoing motion will be presented to the Court.

Dated at Honolulu, T. H., this 22nd day of July, 1947.

/s/ MICHIO WATANABE,
Deputy Attorney General, Territory of Hawaii,
Attorney for Defendants. [283]

Service of the foregoing Motion and Notice of Motion acknowledged this 22nd day of July, 1947.

/s/ HARRIET BOUSLOG,
/s/ MYER C. SYMONDS,
Attorneys for Plaintiffs.

[Endorsed]: Filed July 22, 1947.

[Title of District Court and Cause.]

MOTION TO STRIKE

Come now the plaintiffs in the above-entitled cause, by their attorneys, Harriet Bouslog and Myer C. Symonds, and move the court to strike from the answers of the defendants herein filed on the 21st day of July, 1947, the following allegations thereof:

1. Paragraph V, the words "as more fully appears in Exhibit A, hereto annexed," and such words where they are incorporated by reference in paragraphs XIV, XVI and XVIII.
2. Paragraph XXIV, each and every allegation contained therein; including Exhibits A and B incorporated therein by reference.

The grounds for said motion are that said allegations [286] and exhibits are redundant, immaterial and impertinent.

Dated: Honolulu, T. H., this 11th day of August, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

NOTICE OF MOTION

To Rhoda V. Lewis and Michiro Watanabe, Attorneys for Defendants:

Please take notice that the undersigned will bring the above motion on for hearing in the courtroom of the above-entitled court on the 15 day of August, 1947, at 9 a.m., or as soon thereafter as counsel may be heard.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

[Endorsed]: Filed Aug. 11, 1947. [287]

[Title of District Court and Cause.]

STIPULATION AND ORDER

C. Nils Tavares, having resigned as Attorney General of the Territory of Hawaii on June 30, 1947, and Rhoda V. Lewis now being the duly appointed and Acting Attorney General of the Territory of Hawaii, it is hereby stipulated by the undersigned that, without prejudice to the proceedings already had herein, Rhoda V. Lewis, as Acting Attorney General of the Territory of Hawaii, may be substituted as a defendant herein in place of C. Nils Tavares as Attorney General of the Territory of Hawaii, as of July 1, 1947, that the answer, motions and all proceedings and orders entered herein on or since July 1, 1947, shall be deemed to have been filed, made or apply (as the case may be) to the substituted defendant, and that the preliminary injunction herein entered on February 20, 1947, shall apply to the substituted defendant.

Dated: Honolulu, T. H., this 14th day of August, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

/s/ RHODA V. LEWIS,

Acting Attorney General of
the Territory of Hawaii.

It Is So Ordered.

/s/ J. FRANK McLAUGHLIN,

Judge of the Above-
Entitled Court.

[Endorsed]: Filed Aug. 20, 1947. [289]

[Title of District Court and Cause.]

MOTION

Come now Philip L. Rice, Judge of the Circuit Court of the Fifth Circuit, Territory of Hawaii, and Rhoda V. Lewis, Acting Attorney General, Territory of Hawaii, the defendants in the above-entitled cause, and hereby move that this Court, in ruling upon defendants' motion to dismiss the complaint filed July 22, 1947, take into consideration the whole record made by the pleadings, including the exhibits annexed to the complaint and answers.

This motion is based upon rules 12 and 56 of the Rules of Civil Procedure. [291]

Dated at Honolulu, T. H., September 4, 1947.

/s/ RHODA V. LEWIS,
Acting Attorney General,
Territory of Hawaii.
Attorney for Defendants.

NOTICE OF MOTION

To: Harriet Bouslog and Myer C. Symonds, Attorneys for Plaintiffs:

Please take notice that on Monday, the 8th day of September, 1947, at 9:00 o'clock a.m., or as soon thereafter as counsel can be heard, at the courtroom of the United States District Court for the District of Hawaii, Federal Building, Honolulu, T. H., the foregoing motion will be presented to the Court.

Dated at Honolulu, T. H., September 4, 1947.

/s/ RHODA V. LEWIS,
Acting Attorney General,
Territory of Hawaii,
Attorney for Defendants.

Service of the foregoing Motion and Notice of Motion acknowledged this 4th day of September, 1947.

/s/ HARRIET BOUSLOG,
/s/ MYER C. SYMONDS,
Attorneys for Plaintiffs.

[Endorsed]: Filed Sept. 4, 1947. [292]

In the United States District Court for the
District of Hawaii

October Term, 1947

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, as Judge of the Circuit Court
of the Fifth Judicial Circuit of the Territory
of Hawaii; and C. NILS TAVARES, as Attor-
ney General of the Territory of Hawaii,

Defendants.

DECISION UPON MOTION FOR DETERMI-
NATION OF DEFENSES IN ADVANCE
OF TRIAL—F.R.C.F. 12 (d)

For a statement of the facts of this case which arises under the Civil Rights Act (28 U.S.C. Sec. 41 (14)), grows out of the 1946 strike in the sugar industry of Hawaii, and involves a criminal contempt indictment pending in a Territorial Circuit Court, see its initial phase reported in 69 F. S. 897. This reference discloses that a preliminary injunction issued restraining the defendant Attorney General of the Territory from proceeding further with the prosecution of the plaintiffs for contempt of the Territorial Court.

As mentioned in the intervening case of Hall, et al., vs. Hawaiian Pineapple Company, Ltd., 72 F. S. 533 at 536, the issues left in balance should

have been determined earlier. However, with the criminal contempt proceeding in the Fifth Circuit Court held up by the preliminary injunction, the plaintiffs were not overly insistent upon [294] proceeding to trial and therefore consented to the several extensions of time requested by the Territorial Attorney General's office. When the case began, the then Attorney General was not prepared to reach the constitutional issues, for he was short of assistants and time as he was then serving the Territorial Legislature which was in session at that time. Thereafter, Mr. Tavares resigned as Attorney General and Miss Lewis took over control of the office. While she too directed the office with an inadequate number of assistants, the office in June became involved in the tense pineapple strike described in *Hall, et al., vs. Hawaiian Pineapple Company (supra)*. Accordingly, the court too being otherwise engaged, numerous stipulations extending time were approved. On July 21, 1947, the defendants filed their Answers. It may be here noted that incidentally as of this date, the Territory has a new Attorney General, though no formal request for substitution has been presented.

On July 22, 1947, the defendants filed this Motion under F.R.C.P. 12 (d), (28 U.S.C. following Sec. 723-c), and it was set for hearing August 26, 1947. Prior to that date, Mr. Jenks applied on behalf of the Hawaii Employers Council for permission to appear in the case as an *amicus curiae*. The application was resisted by the plaintiffs and favored by the defendants. The request was granted over objection August 11, 1947.

The oral arguments upon this Motion were extensive and when, due to interruptions, they were finally concluded on September 8, 1947, permission was granted to file briefs. On September 12, 1947, the plaintiffs filed a ninety-three page brief, the *amicus curiae* one of fifty-nine pages and the defendants a two-page memorandum. Until now [295] other court business has prevented the complete digestion of these briefs.

The Motion presents for consideration six of the defenses set up in the Answer. Summarized these are as follows:

1. That the complaint fails to state a cause of action in that the plaintiffs have an adequate remedy in the criminal contempt prosecution in the Territorial Court as there all defenses could be asserted and the constitutional issues raised subject to a right of appeal to the Territorial Supreme Court and, if need be, from there to the U. S. Supreme Court.
2. That the Comity Statute—28 U.S.C. Sec. 379—denies this court jurisdiction of the complaint.
3. That this court has no jurisdiction to enjoin a Territorial Judge.
4. That such a judge is not a proper party defendant.
5. That the complaint fails to state a cause of action for equitable or any other relief, and
6. That even if the Territorial Court's Amended Restraining Order was void, it will support an indictment for contempt. [296]

At the outset, the court posed for the parties consideration the correctness of its prior holdings that the Civil Rights Act's remedies were available in Hawaii despite the fact that in conferring jurisdiction upon District Courts Congress omitted the word "Territory." Both agreed with the court that as the Act applies specifically to a Territory and confers upon one, whose civil rights secured by the Constitution and laws of the United States have been denied by another under color of the law of any Territory, a right to sue at law or in equity for redress (8 U.S.C. Sec. 43), jurisdiction exists in a legislative Federal court in a Territory and may be invoked by one in a proper case despite the fact that the Congress left out the word "Territory" in granting jurisdiction of such suits to United States District Courts.

In the light of the history, the objective and the wording of the whole Act, the word "state" appearing in 28 U.S.C. Sec. 41 (14) should not be narrowly interpreted. Indeed there is more reason under the Civil Rights Act to interpret liberally the word "state" to include "Territory" than to do likewise with reference to 28 U.S.C. Sec. 380 as has recently been done by a three-judge court sitting here in the case of *Mo Hock Ke Lok Po, et al., vs. Ingram M. Stainback, Governor, et al., Civil No. 765* (October 22, 1947). But see dissent by Denman, Circuit Judge. In that case it has been specifically held that Congress by not including the word "Territory" in 28 U.S.C. Sec. 41 (14) intended to leave such issues to litigation in Territorial courts unless

the Federal jurisdictional amount was alleged. Perhaps that ruling is binding here. But, regardless, to hold that for the purposes of this Act, the word "state" does not include Territory would be to prevent the will of [297] Congress having its effect in this part of the United States. Yet Congress intended to protect the Constitutional and Federal civil rights of all people everywhere in the nation. See *Screws vs. United States*, 325 U.S. 91, 98 (1945). Since 1900 Hawaii has been an incorporated part of the United States, and the Federal rights of its people are not a single iota less valuable than are those of the inhabitants of a state. (See 48 U.S.C. Sec. 491 et seq.) Having created the right, having given this legislative court the jurisdiction of a "court of the United States" (48 U.S.C. Sec. 641 et seq.), and having made applicable to the two incorporated Territories the criminal provisions of the Act, (18 U.S.C. Sections 51, 52) there is no insurmountable obstacle to making effective by judicial action the granted civil remedy in a Territory for such an important right and thus curing what seems to be an oversight or an imperfection in the statute. *Keifer & Keifer vs. Reconstruction Finance Corporation*, 306 U.S. 381, 389 (1939); *Texas & M.O.R. Railway Co. vs. Railway Clerks*, 281 U.S. 548, 568 (1930).

Before reaching the defendant's Motion, counsel for plaintiffs suggested that the court had no jurisdiction to entertain it as the defendants had not appealed from the Order granting the preliminary injunction. (28 U.S.C. Sec. 227). Having resisted

issuance of the preliminary injunction, plaintiffs argue that defendants cannot be heard again upon the same or similar questions of law, and that the only thing remaining to be done is to proceed to trial. The Court ruled against plaintiffs because it believed, amongst other reasons, that the constitutional issues had not been examined adequately heretofore on account of the Attorney General's reluctance in February to reach them in his [298] argument upon the prayer for a preliminary injunction. The Statute permitting appeals from Interlocutory decrees granting preliminary injunctions does not require a party to appeal at that time. He may, at his option, await the final decree and raise all questions by appealing from it. *Victor Talking Machine Company vs. George*, 105 F. (2) 697—C.C.A. 3rd (1939). That being so, there is no rule of law which prohibits a party defendant from taking advantage of F.R.C.P. 12 (d) in the absence of an Order of the Court deferring consideration of the defenses in point of law until trial. No such order was made here for the essential facts necessary to a consideration of the questions of law are amply set forth in the voluminous pleadings.

Attached to the defendants' Answer, incorporated as a part thereof, are two lengthy exhibits. These exhibits constitute the complete record of all that transpired in the Fifth Circuit Court of the Territory from the date the Lihue Plantation Company applied for equitable relief until the court, upon its own Motion, amended its Restraining Order. Soon after the defendants' Answer was filed, plaintiffs

moved to strike paragraphs V and XXIV of the Answer of which these exhibits were made a part on the grounds of redundancy, impertinency, and immateriality. During the course of argument upon this Rule 12 (d) Motion, a question arose as to whether or not this court could consider these exhibits to see the basis for the Territorial Court's issuance of its Amended Restraining Order issued by Judge Rice. Plaintiffs argue that it is improper to look behind the Order and besides it is void on its face. [299]

If need be, the court may consider the exhibits attached to and made part of the pleadings of both parties. Together they reveal every step taken in the Territorial Court and are either certified copies (defendants) or copies thereof (plaintiffs). On the other hand, if those attached to the Answer be deemed improper pleading, the defendants' Motion that the court consider them in connection with the Rule 12 (d) Motion transforms that into a "speaking Motion" countenanced by the Federal Rules of Civil Procedure. See Rule 12 (b) and notes thereunder. See also *Samara vs. United States*, 129 F. (2) 594 at 597, C.C.A. 2nd (1942); *Gallup vs. Caldwell*, 120 F. (2) 90 at 92, C.C.A. 3rd (1941); and Rule 12 (b) with approved amendment. The Certificate of the Clerk of the Territorial Court provides here even a better guarantee of factual certainty than an affidavit. In any event, with a certified record of all steps taken in the Territorial Court attached to the pleading, to consider them under Rule 12 (b) as transposing the pending Motion into

one for Summary Judgment under Rule 56 would be an act of judicial economy. What did happen in the Territorial Court is beyond all dispute but the technical point that allegations in an Answer are deemed denied. But this point is irrelevant to a speaking Motion. There is before this court a reliable record of everything the Territorial Court did and said, including argument of counsel, affidavits and the evidence of witnesses who testified. This court may consider that record if need be in disposing of the Motion.

Plaintiffs' pending Motion to Strike those parts of defendants' Answer may also be taken as hereby denied. [300]

With preliminary technicalities disposed of, we come to a consideration of the major contentions of law.

As indicated to counsel during oral argument, the court adheres to its former rulings that the Norris-La Guardia Act, 29 U.S.C. Sec. 101 et seq., does not apply to the Courts of the Territory. Nor does it give this Federal Court exclusive jurisdiction to issue in the Territory injunctions in labor disputes in consonance with the terms of the Norris-La Guardia Act. See *Alesna, et al., vs. Rice, et al., and Hall, et al., vs. Hawaiian Pineapple Company*, (both *supra*).

In the Pineapple case, it was stated that under the decision in *United States vs. Hutcheson*, 312 U.S. 219 (1941), the rights of labor set forth in Sec. 20 of the Clayton Act, 29 U.S.C. Sec. 52, and Sec. 4 of the Norris-LaGuardia Act, 29 U.S.C.

Sec. 104, have been federalized as substantive rights, and that those substantive rights are binding upon the Territory. When re-examined, at the suggestion of both counsel, the statement is found to be inaccurate as it is too broad and general. To the extent that the rights enumerated in the Clayton and Norris-La Guardia Acts coincide with rights guaranteed by the First Amendment to the Constitution, they are, of course, binding upon the Territory. Beyond that they are not binding upon the Territory any more than they are upon a state—which is not at all—for both Acts are limitations upon, and only upon, the Federal Government and its courts. Both Acts were passed to correct judicial interpretations making applicable to labor organizations and activities the Sherman Anti-Trust Act. By what it thought was clear [301] legislation, Congress has twice notified the courts that labor organizations and activities are exempt from the Sherman Act, *Wilson & Co. vs. Birl*, 105 F. (2) 948 at 952, C.C.A. 3rd (1939). In the Clayton Act, Sec. 20, Congress disclosed that none of the specified Acts shall be “held to be violations of any law of the United States.” The history of this phase reveals that originally, as it came to the Senate from the House, the wording was “nor shall any of the Acts specified in this paragraph be considered or held to be violations of the Anti-Trust laws.” Upon the Senate floor, the present wording of Sec. 20 was adopted and from the discussions it is apparent that the intent was to modify the Sherman Act and any other Federal statute which might have a bear-

ing thereon. See Congressional Record, 63rd Congress, 2nd Session, Vol. 51, Part 14, pages 14365-14367. In any event, the limitations were upon the Federal Government, and not an invasion of the rights of the states. And as also before noted, there is nothing in either the Clayton Act or the Norris-La Guardia Act which under the doctrine of the *Hutcheson Case* must be construed together with the Sherman Act as a single piece of integrated legislation—which evidences an intention by Congress to decrease, as it could have, the measure of domestic power which it had in 1900 given the Territory of Hawaii. A limitation upon the broad domestic powers previously given the Territory is not presumed. *Puerto Rico vs. Shell Co. (P.R.) Limited, et al.*, 302 U.S. 253, at 260-263 (1937); *Inter-Island Steam Navigation Co. vs. Territory of Hawaii*, 305 U.S. 306 at 312 (1938); *Kawananakoa vs. Polyblank*, 205 U.S. 349 at 353 (1907), and *Yerian vs. Territory of Hawaii*, 130 F. (2) 786, C.C.A. 9th (1942). [302]

That the Clayton and Norris-La Guardia Acts are limitations upon Federal law only is to be noted in the decisions of the Supreme Court in *Allen-Bradley Co. vs. Board*, 315 U.S. 740 at 748 (1942) and *Apex Hosiery Co. vs. Leader*, 310 U.S. 469 (1940).

With all prior rulings in this case adhered to—including the propriety of the circuit court judge being a party defendant, *Picking, et al., vs. Pennsylvania R.R. Co.*, 151 F. (2) 240 at 250, C.C.A. 3rd (1945)—thus once again disposing adversely to

the defendants of their first four contentions, with the generalization in the Pineapple case clarified, we reach the two points which in issuing the preliminary injunction, the court stated would need further examination. *Alesna vs. Rice*, 69 F.S. 897 at 901.

The questions specifically are: Did Judge Rice's Amended Restraining Order violate plaintiffs' rights, guaranteed by the First Amendment (1) to freedom of speech and (2) to assemble peaceably?

Before touching these delicate and important questions, it may be well to restate that where the constitutional rights of individuals are at stake, a Federal Court has a peculiar duty to step in, in a proper case, and if need be protect the individual against a threatened unjustifiable exercise of the power of a state or Territory. The adequacy of an opportunity to become a defendant in a criminal case and to then raise the same question of law before a court also bound by the Constitution is questionable. As Borchard points out, it is not at all a remedy. It is a hazard. See "Challenging Penal Statutes," Edwin Borchard, 52 *Yale L.J.* 445 at 461. True such has often [303] been assigned as a reason for declining to act, but it is not an impressive one, at least in a First Amendment case. See *Douglas vs. Jeannette*, 319 U.S. 161 (1943). Where vital human liberties protected by the First Amendment, as distinguished from property rights, are at stake and are on the verge of possibly being crushed by the power of the State or Territory, a Federal court in a case alleging unusual circum-

stances is justified in acting despite the availability of a remedy later in the State or Territorial courts. The motivating philosophy in cases such as this has been well expressed in *Stapleton vs. Mitchell*, 60 F.S. 51, where at p. 55 the court said:

“In sum, it seems fairly plain that although the state courts are the preferable forum for the adjudication of the question whether a state statute offends against the Federal Constitution on the theory that state courts equally with the Federal courts are charged with the duty of safeguarding constitutional rights, and since they are the sole judge of the meaning and import of a state statute they should be the first judge of whether state law transcends rights protected by the Federal Constitution. But, where as here, fundamental human liberties are drawn in issue, the Federal courts are a proper forum for the determination of the question whether a state statute trespasses upon an area which the Federal Constitution has set apart as hallowed grounds for expression of democratic ideas. We yet like to believe that wherever the Federal Courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.”

The plaintiffs have been indicted for criminal contempt. The Territorial law defines criminal con-

tempt as a felony but also gives the court power to punish contempt summarily, R.L. of H. 1945, Sec. 11140. In the many years that this law has been in effect, this is said to [304] be the first time that a Territorial judge, instead of using his summary powers, referred the matter to the grand jury. The indictment charges plaintiffs with being in contempt in that——

1. They picketed in mass at a designated time and place for the purpose of obstructing and interfering with ingress to or egress from the Lihue Plantation Company's property by its employees, and other lawfully seeking to enter or leave the company's property; and that
2. They picketed additionally at said time and place in groups of more than three at points of ingress and egress to the Company's property, and the pickets were not in motion nor at least ten feet apart,

all, it is charged, contrary to the terms of the Fifth Circuit Court's Amended Restraining Order.

The portions of this Amended Restraining Order which plaintiffs strenuously assert violated their constitutional rights to freedom of speech and to assemble peaceably are to be found in Sec. 7 of the Restraining Order and its concluding "in furtherance" cause. [305]

The defendants' position is——

1. That the paintiffs have not stated a claim for relief. The decision of the court in *Hall vs. Hawaiian Pineapple Company*, *supra*, it is said disposes of the questions of law here in that what the

Territorial Court did was in the exercise of its powers and the plaintiffs should present their defenses in the Territorial forum.

2. That upon the authority of *United States vs. United Mine Workers of America*, 330 U.S. 258 (1947), even if Judge Rice's Order was void, it still will support an indictment for contempt for such an Order must nevertheless be obeyed until set aside by orderly judicial processes.

3. That the First Amendment does not guarantee the right of mass picketing in order to prevent ingress and egress to property.

4. That Judge Rice's Order is not unreasonable, but it is designed to fit temporarily a particular situation, and in no way interferes with plaintiffs' right to assemble peaceably elsewhere than at points of ingress and egress to Company property.

The plaintiffs' numerous contentions are——

(a) Exceptional circumstances are alleged in that

(1) It is alleged that the defendants engaged in a course of conduct to oppress and intimidate plaintiffs and other working men in the Territory so that they would fear to exercise their rights. [306]

(2) The plaintiffs have been singled out and selected for prosecution under a statute never before used, all pursuant to a plan to intimidate and coerce plaintiffs and others in the exercise of their rights. That plaintiffs were singled out for prosecution because they were Union officers.

(3) The pendency of this criminal contempt case is an employer weapon to instill fear, spread confusion and weaken the Union's and plaintiffs' rights.

(4) Appeals would be costly and of no avail at least until the Ninth Circuit Court of Appeals was reached as the Supreme Court of the Territory in *I.L.W.U. vs. Wirtz*, 37 Haw. 404 (1946) has ruled adversely to plaintiffs' contentions concerning the Clayton and Norris-La Guardia Acts.

(5) Here Judge Rice is the legislator, the wronged person, the prosecutor, and the executor.

(6) It is even claimed that it is contempt to violate a void Order.

(b) The decision in *Hall vs. Hawaiian Pineapple Company*, *supra*, does not control this case, for the reasons that

(1) This case is not moot. Special circumstances are alleged and plaintiffs are in peril of being unlawfully prosecuted for a felony.

(2) The Amended Restraining Order violates the First Amendment.

(3) The Fifth Circuit Court has already ruled adversely to plaintiffs' position on all substantive issues of Federal and constitutional law.

(4) If convicted, plaintiffs who are citizens will lose their civil rights and the non-citizens be barred from naturalization.

(c) The Amended Restraining Order violates substantive Federal rights under the Clayton and Norris-La Guardia Acts.

(d) And finally—the only open issue here—that the Rice Order violates plaintiffs' constitutional rights as guaranteed by the First Amendment in that

(1) It constitutes unjustifiable previous restraint upon their rights of free speech and of assembly.

(2) It narrowly and unreasonably circumscribes these rights at the very time when they are of most value and does so without due regard for the size and scope of the industrial conflict involving 100,000 I.L.W.U. members, 12,000 acres of sugar cane land and twenty company towns and villages.

(3) The Order is vague, ambiguous, and confusing and places the risk of contempt unjustly upon the pickets to determine accurately just what it means, what are the points of ingress and egress, whether in any manner any act of theirs "otherwise" had the effect of accomplishing [308] the prohibited acts, and that the "in furtherance" clause in the Order gives its specific prohibition a tentative quality. In short, it is claimed that it is not clear and explicit and unlawfully places the risk of non-obeyance upon men not too well versed in English, let alone the construction of legal language.

In support of their position that the Order violates their constitutional rights, the plaintiffs rely heavily upon——

Whitney vs. California,

274 U.S. 357 (1927) ;

Herndon vs. Lowry,

301 U.S. 242 (1937) ;

Thornhill vs. Alabama,

310 U.S. 88 (1940) ;

Bridges vs. California,

314 U.S. 252, 263 (1941) ;

West Virginia State Board of Education vs.

Barnette, 319 U.S. 624, 638 (1943) ;

Thomas vs. Collins,

323 U.S. 516, 529 (1945) ;

Marsh vs. Alabama,

326 U.S. 501 (1946).

All cases attesting to the special place occupied by the liberties protected by the First Amendment concerning which in *Stapleton vs. Mitchell*, *supra*, Judge Huxman at p. 63, dissenting in part, well summarizes the current law as gathered from the Thomas case as follows—referring first to the usual rule that a statute is presumed to be constitutional——

“But it has no application when sacred constitutional guaranteed rights are involved. Then an entirely different principle must guide us. That is the conclusion I draw from the decision of the Supreme Court in the Thomas

case. The court points out that these constitutional guarantees have a sanctity and solemnity which is not accorded to general rights arising by operation of statutory law. [309] When a regulation impinges one of these rights, it must not only be justified by a clear public interest and be passed to meet a clear and present danger to such right, but it must also be reasonable and must have a reasonable relation to the object sought to be accomplished. In such case, there is no presumption of constitutionality. There is rather a suspicion in the minds of the courts, the guardian of our constitutional liberties, and the burden is upon him who would uphold the interference with such rights to carry the burden of justifying the interference within the test laid down by the Supreme Court in the *Thomas* case. As stated by the Supreme Court, when the right to restrict the exercise of free speech is the subject of inquiry, it is our 'tradition to allow the widest room for discussion, the narrowest range for its restriction.' (323 U.S. 516, 65 S.Ct. 315, 323).''

The plaintiffs argue there was not only no clear and present danger to the public but further the restraint imposed is unreasonable. See *Thornhill vs. Alabama*, *supra*, *Carpenters & Joiners Union vs. Ritter's Cafe*, 315 U.S. 722 (1922), and *Thomas vs. Collins*, *supra*.

In the preliminary stage of this case, it was said that it appeared, subject to a later and fuller exami-

nation of the questions of law based upon the Constitution that in view of the exceptional and unusual circumstances alleged that the plaintiffs had stated a claim for equitable relief. *Alesna vs. Rice*, at p. 901.

Is there, now that these questions of law have been examined in an atmosphere less tense than that existing in February, and in view of *Hall vs. Hawaiian Pineapple Company*, *supra*, any reason to alter the initial ruling?

I am inclined to believe that there is. It does not now appear to me that the plaintiffs' constitutional rights have been invaded by Judge Rice's Restraining Order. [310]

It has already been decided, though to be sure plaintiffs do not agree, that the Territory has the same domestic powers as a state and may "take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents * * *," *A. F. of L. vs. Swing*, 312 U.S. 321 at 325 (1941). And this it may do by a statute narrowly drawn or by an injunction tailored to fit a specific situation.

Generally speaking, under normal circumstances, no state or Territory can prohibit one's full exercise of his Federal and constitutional rights. Because of Article 6 of the Constitution, the Territory could not, for example, make it a crime for labor to exercise in Hawaii its rights under the Constitution or any federal law any more than a state could. That is what was meant when heretofore the court remarked that the Clayton Act and the Norris-

La Guardia Act did not apply to the Territory “directly” but that Territorial statutes and injunctions must respect labor’s Federal and constitutional rights. But like a state, the Territory may take steps to so regulate, without destroying, these rights of labor that the equally valuable rights of others will be safeguarded and peace and order maintained.

A general statutory restraint upon the liberties guaranteed by the First Amendment is not presumed constitutional but, as noted, is regarded by the courts with suspicion. *Stapleton vs. Mitchell*, *supra*.

But the same rule does not apply to specific injunctions. Restraints thereon by Orders of Courts are presumably valid unless obviously void on their face, for they are deemed to have been carefully drafted by the court to fit a particular situation.

Here, contrary to plaintiffs’ contentions, this Order is not void on its face and may, without resort to the evidence on which it is based, be deemed valid. Although the attack upon the Order is concentrated upon its paragraph (7) and its “in furtherance” clause, it is apparent from a reading of the whole Order that what is prohibited is not the lawful but the unlawful. Omitting the preliminaries, the Order reads:

“Wherefore, you, are hereby restrained and enjoined until the further order of this Court from in any way

“(1) Obstructing or attempting to obstruct, by massing of pickets or otherwise, the ingress to or

egress from the Petitioner's mill, store or other plantation buildings or premises located in the County of Kauai, Territory of Hawaii, of the Petitioner, its employees, or any others who may enter or desire to enter said premises for the purpose of performing work or for other lawful occasion;

“(2) Obstructing or attempting to obstruct, by massing of pickets or otherwise, freedom of movement on or along the public or private roads or ways in or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may pass or desire to pass on or along said roads or ways for the purpose of performing work or for other lawful occasion;

“(3) Obstructing or attempting to obstruct the free movement in, on or about the Petitioner's premises, of the Petitioner, its employees, or [312] any other persons who may be in, on or about said premises for the purpose of performing work or for other lawful occasion;

“(4) Threatening violence to, intimidating, or coercing, or attempting to intimidate or coerce, the employees of the Petitioner or those seeking employment with the Petitioner, or any persons who are lawfully upon the Petitioner's premises or are proceeding to or from said premises;

“(5) Coercing or intimidating, or attempting to coerce or intimidate, employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety or welfare of the families of such employees or the families of those seeking employment with the Petitioner;

or threatening violence to, or coercing or intimidating, or attempting to coerce or intimidate, such families;

“(6) Without express written consent of the occupants thereof, visiting or being at or about the dwelling houses or residence premises belonging to Petitioner and occupied by employees of or persons seeking employment with Petitioner and thereat being offensive, disorderly, threatening or intimidating (in words or actions) towards, and harassing, such occupants, or any of them;

“(7) Mass picketing by assembling in compact groups or congregating in crowds on or near real property of the Petitioner, whether used for business or residence purposes, to thereby [313] prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by Petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property;

“And in Furtherance Hereof, you are hereby ordered to limit the number of pickets which you shall use to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the Petitioner's property, provided, however, that any pickets in excess of three (3) at any one point and station, shall be in motion and, except when passing each other, shall maintain a distance of not less than ten (10) feet between each other and such picketing as shall be done by them shall not be violative of any of the preceding restrictive provisions hereof; all

pickets being hereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing the Petitioner, its employees, or any other persons lawfully seeking to enter or leave the Petitioner's premises; and all pickets being also enjoined from otherwise committing any of the acts hereinbefore prohibited. Any persons engaged in such picketing as is not hereby restricted or prohibited shall wear arm bands reading "Authorized Picket," or "U. P." "

This Order, read without straining to find defects and ambiguities, is sufficiently clear and explicit as to what is prohibited to guide those affected if they gave it, as they must, a fair reading. And it was not necessary for the court [314] to translate its directions into various foreign languages. If such was necessary, that duty fell upon the Union, not the court.

This Order, intelligently read, in no way restrains plaintiffs' rights to freedom of speech or of assembly. Indeed, it does not even prohibit mass picketing. It simply restrains mass picketing at readily ascertainable and customary points of ingress and egress when such type picketing is for the purpose of interfering with the equally valuable rights of others—owners, employees and other persons lawfully entitled to enter or leave the property unmolested. A mass of pickets in the hundreds at the gates of company property so as to prevent others lawfully entitled to enter or leave is obviously not an exercise of the freedom of utterance, but is an endeavor by a show of physical force to prevent others from having the full advantage of their con-

situational rights. The right to picket may not be so exercised that by physical force or position the rights of non-strikers to work and the rights of property owners to protect and maintain and even operate their property is denied.

Under neither the Constiution nor any Federal law is conduct such as that prohibited by the Order immunized from state or Territorial regulation and it was only such conduct that Judge Rice prohibited. He might even, without interfering with the right to picket peacefully, have deemed the situation to have warranted the prohibition of all mass picketing, but he saw fit only to regulate it at certain places when and only when it was conducted for the purpose or had the effect of blocking ingress and egress. [315]

As a further means of controlling such conduct and assuring others of the full enjoyment of their rights, without danger of physical combat, Judge Rice ordered that at the usual points of ingress and egress the pickets be limited to three and at all other picket points or stations if more than three pickets were used, that they be in motion and at least ten feet apart. Plaintiffs claim that this limitation is unreasonable, that apparently Judge Rice deemed two company but three a crowd. Small though the number is, especially in view of the size of the strike, I cannot find it to be an unreasonable regulation, especially as a temporary measure. The obvious purpose of the regulation again clearly appears to be to secure for others an adequate opportunity to utilize their rights without fear or obstruction, and to that end the Order prohibits

those enjoined from blocking public and private roads and ways. Nor is there merit in the argument that the Order in restraining the International Union as well as its local unit is too general. To be effective, all acting in concert had to be enjoined.

Not only is this Restraining Order not void on its face, but going in back of it, as we may, to the picture of the situation described to Judge Rice by the affidavits and the testimony of the witnesses he heard, it stands revealed that the allegations of the petition were sufficiently supported to warrant the utilization by him of his court's equity powers. Granted that it was an *ex parte* hearing, as allowed by Territorial statute, Ch. 302, R.L.H. (1945), it must still be remembered that this is a Temporary Restraining Order which at no time did plaintiffs or others restrained seek to have modified. They only attack the jurisdiction of the Territorial court. The situation made to appear to Judge Rice by affidavit and evidence was one of increasing tenseness lending reasonable [316] credence to the belief that if things were allowed to continue, with ineffective police control, bloodshed might easily ensue. The described scene was one of mill and store entrances solidly blocked by hundreds of massed pickets preventing anyone from going in or out even for maintenance purposes, of plantation roads blocked, or homes picketed and families threatened, annoyed, and disturbed, and of a rising tempo of non-peace inducing language wherever pickets were assembled. When the record of the evidence presented to Judge Rice is read, it provides a further reason for holding his Order valid.

The Order in no way interferes with plaintiffs' or anyone else's right to assemble peaceably. It simply prohibits reasonably picketing in large numbers, or the assembly of numerous persons for the purpose of blocking entrances and exits, public and private roads and ways so that others may not exercise their rights without fear or obstruction. The right of those on strike to assemble in order to hold a meeting or to hear those who wished to speak is not inhibited so long as that right is not exercised in such a way as to deny to others their rights.

So it is that upon the facts alleged—facts incidentally which do not support plaintiffs' argument that a conspiracy to deny plaintiffs their rights and to single them out for prosecution in order to intimidate others has been alleged in the complaint, and also as these facts are amplified by defendants' speaking motion—I find in point of law that plaintiffs' constitutional rights have not been invaded by the Amended Restraining Order.

There being no genuine issues of fact remaining to be tried, summary judgment for the defendants may be entered. [317]

In the light of this disposition of the case, it is unnecessary to rule upon the question of whether if void the Rice Order would nevertheless support an indictment for contempt on the strength of the recent Lewis case, *supra*. Though unnecessary to decide, it may be remarked that it appears that there is no basis here for an application of the doctrine of *Erie v. Tompkins*, 304 U.S. 64 (1938), and *Waialua Agricultural Co. v. Christian*, 305 U.S.

91 (1938), as this is not a diversity of citizenship case and involves no right dependent upon Territorial law. Whether or not the Territorial courts wish to change the Territorial law on the subject, as revealed by *Dole v. Gear*, 14 H. 554 (1903), *Rose v. Ashford*, 22 N. 469 (1915), and *Sakan v. Ashford*, 23 H. 267 (1916), in the light of what for Federal courts the Supreme Court has decided in the *Lewis* case is not for this court to determine.

The Preliminary Injunction is dissolved and a judgment for defendants may be entered.

Dated at Honolulu, T. H., December 3, 1947.

/s/ J. FRANK McLAUGHLIN,
Judge.

[Endorsed]: Filed Dec. 4, 1947. [318]

[Title of District Court and Cause.]

STIPULATION AND ORDER

C. Nils Tavares, having resigned as Attorney General of the Territory of Hawaii on June 30, 1947, and a stipulation and order having been made and entered herein on the 14th day of August, 1947, substituting Rhoda V. Lewis, the Acting Attorney General of the Territory of Hawaii, as a defendant in place of said C. Nils Tavares as Attorney General of the Territory of Hawaii, as of July 1, 1947, and Walter D. Ackerman, Jr., having been since October 14, 1947, and now being the duly appointed Attorney General of the Territory of Hawaii, it is hereby stipulated by the undersigned that, without prejudice to the proceedings already

had herein, Walter D. Ackerman, Jr., as Attorney General of the Territory of Hawaii, may be substituted as a defendant herein in place of Rhoda V. Lewis, Acting Attorney General of the Territory of Hawaii, as of October 14, 1947, that the answer filed July 21, 1947, the defendants' motion filed July 22, 1947, and the defendants' motion filed September 4, 1947, are hereby adopted and [320] permitted to be adopted by said substituted defendant as and for his answer and motions, that the plaintiffs' motion to strike portions of the answer shall be deemed to apply to the substituted defendant, that the decision of the court filed December 4, 1947, shall be deemed to apply to the substituted defendant, and that the preliminary injunction herein entered on February 20, 1947, and which was still in effect on October 14, 1947, shall be deemed to have applied and apply to the substituted defendant from October 14, 1947, to the date of dissolution thereof.

Dated: Honolulu, T. H., this 20th day of December, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

/s/ RHODA V. LEWIS,

Assistant Attorney General of
the Territory of Hawaii.

It Is So Ordered.

/s/ J. FRANK McLAUGHLIN,

Judge of the Above-Entitled
Court.

[Endorsed]: Filed Dec. 20, 1947. [321]

[Title of District Court and Cause.]

**SUGGESTION OF DEATH OF PLAINTIFF
JOSEPH MENDES**

Now comes Harriet Bouslog, one of the attorneys for the plaintiffs in the above-entitled action and informs the court that one of the plaintiffs, Joseph Mendes, is now deceased and suggests that an order of abatement be entered as to said plaintiff.

Dated: Honolulu, T. H., this 20th day of December, 1947.

/s/ HARRIET BOUSLOG.

ORDER OF ABATEMENT

It appearing to the court from the statement of Harriet Bouslog, one of the attorneys for the plaintiffs, that the plaintiff Joseph Mendes is now deceased, and good cause appearing therefor

It Is Hereby Ordered that the action be and the same is hereby abated as to said plaintiff Joseph Mendes.

Dated: Honolulu, T. H., this 20th day of December, 1947.

/s/ J. FRANK McLAUGHLIN,
United States District Judge.

[Endorsed]: Filed Dec. 20, 1947. [323]

In the United States District Court for the
District of Hawaii
Civil No. 769

CONSTANCIO R. ALESNA, et al.,
Plaintiffs,

vs.

PHILIP L. RICE, AS JUDGE OF THE CIR-
CUIT COURT OF THE FIFTH JUDICIAL
CIRCUIT OF THE TERRITORY OF HA-
WAI; and C. NILS TAVARES, AS AT-
TORNEY GENERAL OF THE TERRI-
TORY OF HAWAII,
Defendants.

JUDGMENT AND DECREE DISMISSING AC-
TION AND DISSOLVING PRELIMINARY
INJUNCTION

This cause having come on to be heard on the defendants' motion under F.R.C.P. 12 (d) filed July 22, 1947, and defendants' motion under F.R.C.P. 12 and 56 filed September 4, 1947, and

The above motions having been fully argued by counsel, and the court having rendered its written decision thereon December 4, 1947, construing defendants' motions herein as moving for summary judgment, dissolving the preliminary injunction heretofore issued herein, directing that summary judgment for the defendants be entered, and further directing that as a result of the court's rulings on the foregoing, plaintiffs' motion to strike should be denied without argument thereon, now therefore

It Is Hereby Ordered, Adjudged and Decreed that defendants' motions be and they hereby are

sustained, that plaintiffs' motion to strike be and it hereby is denied, [325] that this action be and it hereby is dismissed, and that the preliminary injunction issued herein on February 20, 1947, be and it hereby is dissolved.

Dated at Honolulu, T. H., this 22nd day of December, 1947.

/s/ J. FRANK McLAUGHLIN,
Judge.

Approved as to Form:

/s/ HARRIET BOUSLOG,
/s/ MYER C. SYMONDS,
Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 22, 1947. [326]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the appellants above named, except Joseph Mendes, deceased, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree, entered in this action on December 22, 1947, dismissing the above-entitled action and dissolving the preliminary injunction herein.

Dated: Honolulu, T. H., December 24th, 1947.

/s/ HARRIET BOUSLOG,
/s/ MYER C. SYMONDS,
GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ GEORGE R. ANDERSEN,
Attorneys for Appellants.

[Endorsed]: Filed Dec. 24, 1947. [328]

[Title of District Court and Cause.]

PETITION FOR RESTORATION OF
INJUNCTION PENDING APPEAL

To the Honorable J. Frank McLaughlin, Judge of
the Above-Entitled Court:

The petition of the plaintiffs respectfully represent:

That on the 24th day of December, 1947, a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed herein from the judgment and decree dismissing the above-entitled action and dissolving the preliminary injunction herein.

That the defendant Philip L. Rice, as Judge of The Circuit Court for the Fifth Judicial Circuit of the Territory of Hawaii, has heretofore granted numerous continuances to plaintiffs to plead to the criminal contempt proceedings referred to in the complaint and has set the said criminal contempt proceedings on his court calendar for plea on the 13th day of January, 1948, and has informed plaintiffs that he intends to proceed forthwith with the trial of petitioners herein for the contempt of the alleged void amended restraining order issued by him; that the said defendant Walter D. Ackerman, Jr., as Attorney General of the Territory of Hawaii, or one of his deputies, or agents, will conduct the prosecution of petitioners at said trial.

That the complaint herein alleges that the said amended restraining order was and is void in that it was issued in violation of the provisions of the Norris-LaGuardia Act.

That the applicability of the Norris-La Guardia Act to the Territory of Hawaii is the issue involved in the appeal in International Longshoremen's & Warehousemen's Union, et al., v. Cable A. Wirtz, et al., now pending in the said United States Circuit Court of Appeals for the Ninth Circuit and numbered 11,568 among the records thereof, and that it is therefore in the best interest of justice to restore the preliminary injunction herein pending the outcome of the appeal therein.

That unless restrained by this court pending the appeal from the judgment and decree dismissing the above-entitled action and dissolving the preliminary injunction herein, the trial of petitioners will proceed as above referred to and as a result thereof petitioners will suffer great and irreparable damage, which injury and damage would [331] not be completely remedied or rectified in the event that the said Court of Appeals for the Ninth Circuit should reverse said judgment and decree made and entered herein.

Wherefore, petitioners pray that this court, pursuant to Section 62 (c) of the Rules of Civil Procedure for the District Courts of the United States, make and enter its order restoring the preliminary injunction heretofore made and entered herein until further order of this court.

Dated: Honolulu, T. H., December 24, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Petitioners.

City and County of Honolulu,
Territory of Hawaii—ss.

Harriet Bouslog, being first duly sworn on oath, deposes and says that she is one of the attorneys for the petitioners in the foregoing petition; that she makes this verification for and on their behalf as none of said petitioners are located in the City and County of Honolulu, T. H., wherein affiant maintains her office; that she has read said petition, knows the contents thereof and that same is true.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 24th day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires July 31, 1951.

[Endorsed]: Filed Dec. 24, 1947. [332]

[Title of District Court and Cause.]

STIPULATION AND ORDER APPROVING
STIPULATION

It Is Hereby Stipulated and Agreed by and between Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Toroichi Kanda, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, plaintiffs, and Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, one of the defendants herein, as follows:

That plaintiffs, upon restoration of the preliminary injunction made and entered herein, pending the appeal taken by the plaintiffs to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree of this court dismissing the action herein and dissolving the said preliminary injunction issued herein on the 20th day of February, 1947, do hereby stipulate and agree that in the proceedings for contempt pending in the Circuit Court of the Fifth Circuit, [334] Territory of Hawaii, entitled Territory of Hawaii vs. Constancio Alesna, et al., being criminal No. 896 among the records of said court, or such other contempt proceeding as may be brought against them based on alleged violations of the amended temporary restraining order issued in that certain action in said circuit court entitled The Lihue Plantation Company, Limited, vs. International Longshoremen's and Warehousemen's Union (C.I.O.) et al.,

being Equity No. 120 among the records of said circuit court, they and each of them shall make and file in said circuit court a stipulation, approved as to form by said defendant, (a) that the Territory of Hawaii shall have the right to perpetuate the Testimony of such witnesses as it deems desirable for the purposes of such contempt proceedings (that is, the proceedings now pending or any other proceedings based on alleged violations of said amended temporary restraining order), (b) that the laws of the Territory of Hawaii governing the method and manner of perpetuating testimony in civil matters shall be followed in perpetuating such testimony, as nearly as may be, (c) that the Territory of Hawaii shall have the right to use at the trial of such contempt proceedings (now pending or hereafter brought) the deposition of any witness who at the time of such trial is dead or insane or whose attendance to testify at such trial cannot be required or obtained pursuant to the powers of the Territory of Hawaii to summon witnesses, and (d) that said plaintiffs do thereby irrevocably waive their right, and each of them does thereby irrevocably waive his right, [335] to be confronted at the trial with such witnesses as may be unavailable for any cause hereinabove specified.

And said defendant hereby stipulates and agrees, in view of the stipulation hereinabove made by the plaintiffs, that the plaintiffs shall likewise have the right to perpetuate the testimony of such witnesses as they deem desirable for the purposes of such contempt proceedings and to use the depositions of such witnesses upon the same terms and conditions as hereinabove provided.

And said defendant, in the event of modification of said preliminary injunction upon its restoration, so as to permit summary contempt proceedings to be instituted against said plaintiffs should the pending indictment for contempt be discontinued, hereby stipulates and agrees that in such event the appeal record herein may be supplemented or amended in such manner as may be required by reason of such a discontinuance and institution of summary contempt proceedings, in order to preserve plaintiffs' appeal; and it is hereby stipulated and agreed between the plaintiffs and the defendant that the appeal upon the record so supplemented or amended may be considered the same as if the summary contempt proceedings had been brought by the Territory in the first instance, instead of the indictment.

Dated at Honolulu, T. H., this 7th day of January, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

/s/ RHODA V. LEWIS,

Assistant Attorney General, Attorney for Defendant, Walter D. Ackerman, Jr., Attorney General, T. H.

The foregoing Stipulation is hereby approved.
January 8, 1948.

/s/ J. FRANK McLAUGHLIN,

United States District Judge.

[Endorsed]: Filed Jan. 8, 1948. [337]

[Title of District Court and Cause.]

ORDER RESTORING INJUNCTION
PENDING APPEAL

Upon the reading, filing and consideration of the verified petition of the plaintiffs above named praying for an order restoring the preliminary injunction herein pending the outcome of the appeal filed herein to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree made and entered herein dismissing the above-entitled action for injunction and dissolving the preliminary injunction, and

It appearing to the court from the petition that the defendant Philip L. Rice, as Judge of the Circuit Court for the Fifth Judicial Circuit of the Territory of Hawaii, has set the criminal contempt proceedings referred to in the complaint on his calendar for plea on January 13, 1948, and has informed plaintiffs that he intends to proceed forthwith with the trial of petitioners herein for contempt of the alleged void amended restraining order issued by him, and [339]

It further appearing to the court from said petition that the defendant Walter D. Ackerman, Jr., as Attorney General of the Territory of Hawaii, or one of his deputies, agents or representatives, will conduct the prosecution of petitioners at said trial, and

It further appearing from the complaint herein that the petitioners allege that they have been deprived of rights guaranteed them under the laws

and Constitution of the United States, and in support of this contention allege that the said amended restraining order was issued in violation of the Norris-La Guardia Act, and was and is void, and

It further appearing to the court from the petition that the applicability of the Norris-La Guardia Act in the courts of the Territory of Hawaii is an issue involved in the appeal in International Longshoremen's & Warehousemen's Union, et al., v. Cable A. Wirtz, et al., now pending in the said United States Circuit Court of Appeals for the Ninth Circuit and numbered 11,568 among the records thereof, and that it would be in the best interest of justice to restore the preliminary injunction herein, pending the outcome of the appeal therein, if means could be found to perpetuate the testimony of the witnesses in said contempt proceedings, and

The plaintiffs having offered to waive their right to be confronted with the witnesses against them, to the extent such witnesses may be unavailable upon the trial of said contempt proceedings or such other contempt proceedings as may be based on alleged violations of said amended [340] temporary restraining order, and plaintiffs accordingly having entered into a stipulation relating to such waiver of the right of confrontation and relating to the perpetuation of testimony, this day filed and approved by the court, and

It further appearing to the court from defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, that prior to the deter-

mination of said appeal, said indictment for contempt may be discontinued and summary contempt proceedings instituted against plaintiffs, based on the same alleged violation of the said amended Temporary Restraining Order, which could not be done if said Preliminary Injunction is restored pending the appeal unless it is modified as hereinafter set forth, and

It further appearing to the court that by the said stipulation this day filed the defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, has stipulated and agreed that in the event the pending indictment for contempt should be discontinued and summary contempt proceedings instituted against said plaintiffs, the appeal record herein may be supplemented or amended in such manner as may be required by reason of such a discontinuance and institution of summary contempt proceedings, in order to preserve plaintiffs' appeal, and further the plaintiffs and defendant have stipulated and agreed that the appeal upon the record so supplemented or amended may be considered the same as if the summary contempt proceedings had been brought by the Territory in the first instance, instead of the indictment.

And the court being fully advised in the premises and it being a proper case for this order, [341]

It Is Hereby Ordered, pursuant to section 62 (c) of the Rules of Civil Procedure for the District Courts of the United States, that the preliminary injunction made and entered herein be and the

same is hereby restored in a modified form, until the further order of this court, and that accordingly defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, his deputies, agents and representatives be and they are hereby restrained and enjoined, until the further order of this court, from proceeding to trial on that certain indictment for contempt pending in the Circuit Court of the Fifth Circuit, Territory of Hawaii, entitled Territory of Hawaii v. Constancio Alesna, et al., and being Criminal No. 896 among the records of said Circuit Court, or from proceeding to trial on any other contempt charge based on any alleged violation of the amended temporary restraining order issued in that certain action in said Circuit Court entitled The Lihue Plantation Company, Limited, v. International Longshoremen's and Warehousemen's Union (CIO), et al., being Equity No. 120 among the records of said Circuit Court.

Dated at Honolulu, T. H., this 8th day of January, 1948, at 11:35 a.m.

/s/ J. FRANK McLAUGHLIN,
United States District Judge.

[Endorsed]: Filed Jan. 8, 1948. [342]

[Title of District Court and Cause.]

STIPULATION AND ORDER APPROVING
STIPULATION

It is hereby stipulated that on January 13, 1948, upon motion of defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, the defendants Philip L. Rice, as Judge of the Circuit Court for the Fifth Circuit of the Territory of Hawaii, entered a nolle prosequi of the indictment in that certain criminal proceeding entitled Territory of Hawaii v. Constancio R. Alesna, et al., being Criminal No. 896 among the records in said court, which said indictment is the same indictment referred to in the above entitled action.

It is further stipulated that on said January 13, 1948, an Information was filed by the Territory of Hawaii in said Circuit Court for the Fifth Circuit, against plaintiffs above named except Ralph Joseph Mendes, which information arose out of the same incident, occasion, occurrence or series of occurrences at the same time and place, as that involved in the indictment [344] and is based on the same alleged violations of a certain amended Temporary Restraining Order as set forth in the indictment, a copy of said information being attached hereto and marked Exhibit A.

It is further stipulated that pursuant to, and in accordance with, the stipulation hereto made and entered herein and approved by the above entitled court and the order restoring injunction pending

appeal herein, that said information be and it is hereby made part of the above entitled action in place and stead of the indictment with the same force and effect as though said information had been the subject matter of the complaint herein instead of the indictment, and that the appeal herein shall apply to the information the same as if the summary contempt proceedings had been brought by the Territory in the first instance, instead of the indictment.

Dated January 20th, 1948, Honolulu, T. H.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ GEORGE R. ANDERSEN,

Attorneys for Appellants.

/s/ RHODA V. LEWIS,

Assistant Attorney General,

/s/ MICHIO WATANABE,

Attorneys for Appellees.

The foregoing Stipulation is hereby approved.
January 20, 1948.

/s/ J. FRANK McLAUGHLIN,

United States District Judge.

In the Circuit Court of the Fifth Circuit
Territory of Hawaii

S. P. 73

At Chambers

In the Matter of the Contempt of Court of
CONSTANCIO R. ALESNA, JOSE BAGOGO
BERNAL, DANIEL RODRIGUES FER-
REIRA, YUTAKA GOHARA, CORNEL
IHA, MASASHI KAGEYAMA, TOROICHI
KANDA, FRANK GONSALVES PER-
REIRA, NOBORU TAKEUCHI, FRED
TANIGUCHI, and GENKICHI WADA,
Respondents.

SUMMARY CONTEMPT PROCEEDINGS
INFORMATION AND EXHIBIT A

Filed at 10:30 o'clock a.m., January 13, 1948.
Kazue Imamura, Clerk, Circuit Court, Fifth
Circuit.

I do hereby certify the within Information and
Exhibit A thereto attached to be full, true and cor-
rect copies of the originals thereof now on file in
the above-entitled Court and cause.

Witness my hand and the Seal of said Court this
13th day of January, A.D. 1948.

/s/ SAMUEL H. KIMURA,
Clerk, Circuit Court,
Fifth Circuit.

Walter D. Ackerman, Jr., Attorney General, Ter-
ritory of Hawaii. [346]

INFORMATION

To the Honorable, the Presiding Judge Sitting at
Chambers, in Special Proceedings:

First Count

1. Now comes the Territory of Hawaii, by Walter D. Ackerman, Jr., Attorney General of said Territory, on his official oath, and, complaining of the respondents above named, who are also mentioned by name in paragraph 3 of this Information, represents to the Court:

2. That at Lihue, County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 23rd day of September 1946, a certain lawful order, called an "Amended Temporary Restraining Order" (hereinafter in this Court and elsewhere in this Information referred to as the "order"), was duly and lawfully made, entered and issued by and in the name of the Honorable Philip L. Rice, Circuit Judge, at Chambers, Fifth Circuit, Territory of Hawaii, in a cause entitled "Equity No. 120, in the Circuit Court of the Fifth Circuit, Territory of Hawaii, at Chambers, in equity, The Lihue Plantation Company, Limited, Petitioner, vs. International Longshoremen's and Warehousemen's Union (CIO), Local [347] 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149, of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Pontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benja-

min Lida, George Nasaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Doe, et al., Respondents," said parties being hereinafter referred to as the "petitioner" and the "general respondents," respectively, a true and correct copy of which order is hereto attached, marked "Exhibit A," and made a part hereof, which order was directed in the name of the Territory of Hawaii to the general respondents and by which said order respondents were restrained and enjoined from, among other things, in any way mass picketing by assembling in compact groups or congregating in crowds on or near real property of the petitioner, whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by said petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property; that, pursuant to an order of service made and entered by said Court at Lihue aforesaid on said 23rd day of September 1946, commanding the service of copies of said order, a certified copy of said order was duly served on each of said general respondents by handing and delivering to and leaving with each of them personally, and with an officer of said International Longshoremen's and Warehousemen's Union (CIO) and an officer of said Local 149 of said International Longshoremen's and Warehousemen's Union (CIO), a certified copy thereof on said date in the Territory of Hawaii and within the jurisdiction of said Court. [348]

3. That, notwithstanding said order, the respondents herein, Constancio R. Alesna, Jose Bago Bernal, Daniel Rodrigues Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Toroichi Kanda, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniouchi and Genkichi Wada (all of which said last mentioned respondents are hereinafter referred to as the "accused respondents"), at Hanamaulu, in the County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 10th day of October 1946, did unlawfully and wilfully disobey and violate said order by then and there mass picketing by assembling with large numbers of divers and sundry persons, to said Attorney General unknown, in compact groups and congregating with such persons in crowds on and near certain real property of the petitioner used for business purposes, to-wit, the Hanamaulu Shop, to thereby prevent and attempt to prevent and physically obstruct and interfere with ingress to and egress from said real property by the petitioner, its employees, including Alfred G. Perreira, Eddie Medeiros, Manual Medeiros, William Farias, Manuel Bugado and Ernest S. Carvalho III, and each of them, and other persons lawfully seeking to enter and leave said real property, the said accused respondents, and each of them, then and there being members of said International Longshoremen's and Warehousemen's Union (CIO) and of Local 149 of said International Longshoremen's and Warehousemen's Union (CIO), general respondents hereinabove mentioned, and said accused

respondents then and there having notice and knowledge of said order, and so in manner and form aforesaid, they, the said accused respondents, and each of them, did unlawfully and wilfully and knowingly disobey and violate said order and were then and there and thereby and now are in contempt of this Honorable Court. [349]

SECOND COUNT

4. And the said Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, on his official oath, in order to charge a further violation of the order hereinabove and hereinafter mentioned, arising out of the same acts and transactions hereinabove set forth in the First Count of this Information, does further represent to the Court:

5. That at Lihue, County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 23rd day of September 1946, a certain lawful order, called an "Amended Temporary Restraining Order" hereinafter in this Count and elsewhere referred to as the "order"), was duly and lawfully made, entered and issued by and in the name of the Honorable Philip L. Rice, Circuit Judge, at Chambers, Fifth Circuit, Territory of Hawaii, in a cause entitled "Equity No. 120, in the Circuit Court of the Fifth Circuit, Territory of Hawaii, at Chambers, in Equity, The Lihue Plantation Company, Limited, Petitioner, vs. International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1,

Local 149, of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Take-moto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Doe, et al., Respondents," said parties being hereinafter referred to as the "petitioner" and the "general respondents," respectively, a true and correct copy of which order is hereto attached, marked "Exhibit A," and made a part hereof, which order was directed in the name of the Territory of Hawaii to said general respondents and by which said order [350] said general respondents were, among other things, ordered to limit the number of pickets used by said general respondents to not more than three pickets in a group at any point and station when stationed at points of ingress to and egress from the petitioner's property; that, pursuant to an order of service made and entered by said Court at Lihue aforesaid on said 23rd day of September 1946, commanding the service of copies of said order, a certified copy of said order was duly served on each of said general respondents by handing and delivering to and leaving with each of them personally, and with an officer of said International Longshoremen's and Warehousemen's Union (CIO) and an officer of said Local 149 of said International Longshoremen's and Warehousemen's Union (CIO), a certified copy thereof on said date in the Territory of Hawaii and within the jurisdiction of said Court.

C. That, notwithstanding said lawful order, the respondents herein, Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriques Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Torioichi Kanda, Frank Gonsalves Ferreira, Noboru Takeuchi, Fred Taniguchi and Genkichi Wada (all of which said last mentioned respondents are hereinafter referred to as the "accused respondents"), at Nanamaulu, in the County of Kauai, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 10th day of October 1946, did unlawfully and wilfully disobey and violate said order by then and there picketing with large numbers of divers and sundry persons, to the said Attorney General unknown, in groups of more than three pickets at points of ingress to and egress from the petitioner's property, to-wit: the Hanamaulu Shop, the said accused respondents, and to each of them, then and there [351] being members of said International Longshoremen's and Warehousemen's Union (CIO) and of Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), general respondents hereinabove mentioned, and said accused respondents then and there having notice and knowledge of said order, and so in manner and form aforesaid, they, the said accused respondents, and each of them, did unlawfully and wilfully and knowingly disobey and violate said order and were then and there and thereby and now are in contempt of this Honorable Court.

Wherefore, the said Attorney General, for and on behalf of the said Territory, moves this Court for a rule upon the said respondents, Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriques Ferreira, Yutaka Gohara, Cornel Iha, Nasashi Kageyama, Toroichi Kanda, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi and Genkichi Wada to be and appear before this Honorable Court, on a day to be named, and show cause, if any they or any of them have, why they would not be adjudged guilty of and punished for contempt of this Honorable Court in respect of each and all of the aforesaid contemptuous acts.

Dated at Honolulu, T. H., this 12th day of January, 1948.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of the
Territory of Hawaii.

EXHIBIT A

[Title of Circuit Court and Cause.]

AMENDED TEMPORARY RESTRAINING
ORDER

Filed at 2:16 o'clock p.m., September 23, 1946.

SAMUEL H. KIMURA,

File Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii. [353]

Territory of Hawaii: To the International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., Greetings:

Whereas, The Lihue Plantations Company, Limited, has filed herein a petition against you praying to be relieved touching the matters therein set forth; and

Whereas, an order to show cause issued from and under the seal of this Court ordering you to appear before [354] the undersigned, Judge of the above-entitled Court, on Friday, the 27th day of September, 1946, at the hour of 9 o'clock a.m., and

Whereas, a Motion for Temporary Restraining Order was also filed and, by supporting affidavits and evidence adduced by the Petitioner at the time

of the filing of the petition in the above-entitled proceeding, it appeared that the acts therein specified and complained of will continue unless restrained pending a hearing on the petition in the above-entitled proceedings; and

Whereas, pursuant to the prayer of said petition and the said motion, a Temporary Restraining Order was issued on the 17th day of September, 1946, and subsequently the Respondents, by Richard Gladstein, acting in their behalf and as their attorney, entered an appearance and presented an oral motion to dissolve and vacate said Temporary Restraining Order, and a hearing thereon was had before the Court, to-wit, the undersigned, the Circuit Judge of the Fifth Circuit, Territory of Hawaii, at Chambers, In Equity, Petitioners being represented thereat by Attorneys Montgomery E. Winn and E. C. Moore, of Vitousek, Pratt, and Winn, and Dudley C. Lewis, Esq., Deputy Attorney General of the Territory of Hawaii, appearing at the request of the Court and as *amicus curiae*, and the Court, after hearing and considering argument on said motion having over-ruled the same and having given notice to the parties to appear at, and continued proceedings until the 23d day of September, 1946, so that the parties might then be advised if the Court should then, upon its own initiative, modify, the aforesaid Temporary Restraining Order;

Now Therefore, after consideration and deliberation, the Court does, on this 23d day of September, 1946, modify the [355] aforesaid Temporary Restraining Order and

It Is Ordered that said Temporary Restraining Order be, and it hereby is modified to the extent hereof and by substitution therefor of this Amended Temporary Restraining Order;

Wherefore, you, International Longshoremen's and Warehousemen's Union (CIO), Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Unit 1, Local 149 of the International Longshoremen's and Warehousemen's Union (CIO), Joseph Nunes, Daniel Rapozo, Fernando Fontanilla, Thomas Takemoto, Sunao Iwamoto, William Paia, Yoshikazu Morimoto, Benjamin Iida, George Masaki, Charles Morita, Ronald Toyofuku, Taku Akama, John Doe, Mary Doe, Richard Roe, et al., are hereby restrained and enjoined until the further order of this Court from in any way

(1) Obstructing or attempting to obstruct by massing of pickets or otherwise, the ingress to or egress from the Petitioner's mill, store or other plantation buildings or premises located in the County of Kauai, Territory of Hawaii, of the Petitioner, its employees, or any others who may enter or desire to enter said premises for the purpose of performing work or for other lawful occasion;

(2) Obstructing or attempting to obstruct, by massing of pickets or otherwise, freedom of movement on or along the public or private roads or ways in or about the Petitioner's premises, of the Petitioner, its employees, or any other persons who may pass or desire to pass on or along said roads

or ways for the purpose of performing work or for other lawful occasion;

(3) Obstructing or attempting to obstruct the free movement in, on or about the Petitioner's premises, of the [356] Petitioner, its employees, or any other persons who may be in, on or about said premises for the purpose of performing work or for other lawful occasion;

(4) Threatening violence to, intimidating, or coercing, or attempting to intimidate or coerce, the employees of the Petitioner or those seeking employment with the Petitioner, or any persons who are lawfully upon the Petitioner's premises or are proceeding to or from said premises;

(5) Coercing or intimidating, or attempting to coerce or intimidate, employees of the Petitioner or those seeking employment with the Petitioner, by means of threats concerning the safety or welfare of the families of such employees or the families of those seeking employment with the Petitioner; or threatening violence to, or coercing or intimidating, or attempting to coerce or intimidate, such families;

(6) Without express written consent of the occupants thereof, visiting or being at or about the dwelling houses or residence premises belonging to Petitioner and occupied by employees of or persons seeking employment with Petitioner and thereat being offensive, disorderly, threatening or intimidating (in words or actions) towards, and harassing, such occupants or any of them;

(7) Mass picketing by assembling in compact groups or congregating in crowds on or near real property of the Petitioner whether used for business or residence purposes, to thereby prevent or attempt to prevent or in any manner physically obstruct or interfere with ingress to or egress from said real property by Petitioner, any of its employees, or any other persons lawfully seeking to enter or leave any of said real property; [357]

And in Furtherance Hereof, you are hereby ordered to limit the number of pickets which you shall use to not more than three (3) pickets in a group at any point and station when stationed at points of ingress to and egress from the Petitioner's property, provided, however, that any pickets in excess of three (3) at any one point and station, shall be in motion and, except when passing each other, shall maintain a distance of not less than ten (10) feet between each other and such picketing as shall be done by them shall not be violative of any of the preceding restrictive provisions hereof; all pickets being hereby enjoined from picketing other than in a peaceful and lawful manner and from obstructing the Petitioner, its employees, or any other persons lawfully seeking to enter or leave the Petitioner's premises; and all pickets being also enjoined from otherwise committing any of the acts hereinbefore prohibited. Any persons engaged in such picketing as is not hereby restricted or pro-

hibited shall wear arm bands reading "Authorized Picket," or "U. P."

Dated: Lihue, Kauai, T. H., September 23, 1946.

[Seal]

PHILIP L. RICE,

Circuit Judge, Fifth Circuit,
Territory of Hawaii.

I hereby certify that the foregoing is a full, true and correct copy of the original filed in the above-entitled court and cause.

[Seal]

SAMUEL H. KIMURA,

File Clerk, Circuit Court, Fifth Circuit, Territory
of Hawaii.

[Endorsed]: Filed Jan. 20, 1948. [358]

In the United States District Court for the
District of Hawaii

Civil No. 769

CONSTANCIO R. ALESNA, et al.,

Plaintiffs,

vs.

PHILIP L. RICE, AS JUDGE OF THE CIR-
CUIT COURT FOR THE FIFTH JUDI-
CIAL CIRCUIT OF THE TERRITORY OF
HAWAII, et al.,

Defendants.

DESIGNATION OF RECORD
ON APPEAL

To the Clerk of the United States District Court
for the District of Hawaii:

Please prepare and certify a transcript of the
record in this case to be filed with the Clerk of the

United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal herein, and include in said transcript the following:

1. Complaint for Injunction, Order to Show Cause, and Temporary Restraining Order (with Exhibits).
2. Summons.
3. Order to Show Cause and Temporary Restraining Order.
4. Defendants' Objections to Allowance of Preliminary Injunction.
5. Ruling upon Motion for a Preliminary Injunction.
6. Preliminary Injunction.
7. Answer to Complaint of Philip L. Rice—Exhibits A and B. [360]
8. Answer to Complaint of C. Nils Tavares.
9. Motion for Hearing and Determination of Defenses Before Trial and Notice of Motion.
10. Motion to Strike and Notice of Motion.
11. Stipulation and Order, dated August 14, 1947.
12. Motion (to consider whole record), dated September 4, 1947.
13. Decision upon Motion for Determination of Defenses in Advance of Trial.
14. Suggestion of Death of Plaintiff Joseph Mendes and Order of Abatement.

15. Stipulation and Order, filed December 20, 1947.

16. Judgment and Decree Dismissing Action and Dissolving Preliminary Injunction.

17. Notice of Appeal.

18. Petition for Restoration of Injunction Pending Appeal.

19. Stipulation and Order Approving Stipulation.

20. Order Restoring Injunction Pending Appeal.

21. Stipulation and Order dated January 20, 1948, with Exhibit.

22. This Designation of Record on Appeal.

Dated: Honolulu, T. H., this 22nd day of January, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ GEORGE R. ANDERSEN,

Attorneys for Appellants.

[Endorsed]: Filed Jan. 22, 1948. [361]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD WITH THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

Upon application of Myer C. Symonds, one of the attorneys on record for the appellants herein, and good cause appearing therefore:

It Is Hereby Ordered that the time for the appellants to file the record on appeal and docket the action with the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including March 3, 1948.

Dated: Honolulu, T. H., Jan. 27, 1948.

/s/ J. FRANK McLAUGHLIN,

United States District Judge.

[Endorsed]: Filed Jan. 27, 1948. [363]

[Title of District Court and Cause.]

BOND ON APPEAL

Know all men by these presents, that Constancio R. Alesna, on behalf of himself and Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Torichi Kanda, Frank Gonsalves Perreira, Noboru Takeuchi, Fred Taniguchi, and Genkichi Wada, as principals, and United States Fidelity and Guaranty Company, a corporation duly licensed to carry on business in the Territory of Hawaii, as surety, are held and

firmly bound unto the defendants above-named, hereinafter called the "Appellees," in the sum of Two Hundred Fifty Dollars (\$250.00) for the payment of which well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, and firmly by these presents. [365]

The condition of this obligation is such that:

Whereas the above bounden principal and the other named petitioners have filed their Notice of Appeal from the United States District Court for the District of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the final Judgment and Decree of this court made and entered in the above-entitled cause on the 22nd day of December, 1947.

Now, Therefore, if the said principal and the other named petitioners shall prosecute their appeal with effect and answer all costs if they fail to sustain said appeal, then this obligation shall be void, otherwise it remains in full force and effect.

Sealed with our seal, and dated this 5th day of February, 1948.

/s/ CONSTANCIO R. ALESNA,
UNITED STATES FIDELITY
& GUARANTY COMPANY,

[Seal] By /s/ HERMAN LUIS,

Its Attorney in Fact.

Territory of Hawaii,
County of Kauai—ss.

On this 5th day of February, A.D. 1948, before me appeared Constancio R. Alesna, to me personally known, who being by me duly sworn, did say that

he is the principal named in the foregoing Bond on Appeal and that he acknowledged said instrument as his free act and deed.

[Seal] /s/ NEIL ROBERTSON,
Notary Public, Fifth Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949. [366]

Territory of Hawaii,
City and County of Honolulu—ss.

On this 9th day of February, 1948, before me personally appeared Herman Luis, to me personally known, who being duly sworn did say that he is the Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 8th day of April, 1931, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation under the authority of its Board of Directors, and said Herman Luis acknowledged said instrument to be the free act and deed of said corporation.

 /s/ J. D. MARQUIS,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires July 17th, 1949.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety.

 /s/ J. FRANK McLAUGHLIN,
U. S. District Judge.

[Endorsed]: Filed Feb. 10, 1948. [367]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing pages numbered 1 to 367, inclusive, are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$43.50 and that said amount has been paid to me by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of February, 1948.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Endorsed]: No. 11872. United States Circuit Court of Appeals for the Ninth Circuit. Constancio R. Alesna, Jose Bagogo Bernal, Daniel Rodriguez Ferreira, Yutaka Gohara, Cornel Iha, Masashi Kageyama, Toroichi Kanda, Frank Gonsalves Pereira, Noboru Takeuchi, Fred Taniguchi and Genkichi Wada, Appellants, vs. Philip L. Rice, as Judge of the Circuit Court for the Fifth Judicial Circuit of the Territory of Hawaii and Walter D. Ackerman, Jr., as Attorney General of the Territory of Hawaii, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed March 1, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,872

CONSTANCIO R. ALESNA, JOSE BAGOGO
BERNAL, DANIEL RODRIGUES FER-
REIRA, YUTAKA GOHARA, CORNEL
IHA, MASASHI KAGEYAMA, TOROICHI
KANDA, FRANK GONSALVES PER-
REIRA, NOBORU TAKEUCHI, FRED
TANIGUCHI, and GENKICHI WADA,
Appellants,

vs.

PHILIP L. RICE, AS JUDGE OF THE CIR-
CUIT COURT FOR THE FIFTH JUDI-
CIAL CIRCUIT OF THE TERRITORY OF
HAWAII; and C. NILS TAVARES, AS AT-
TORNEY GENERAL OF THE TERRI-
TORY OF HAWAII,
Appellees.

STATEMENT PURSUANT TO RULE 19,
SUBDIVISION 6

Receipt of a copy of within statement acknowl-
edged 3/18/48.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

To the Clerk of the Above-Entitled Court:

Now come appellants and pursuant to Rule 19,
Subdivision 6, state as follows:

1. Appellants rely on the following points on
the appeal:

(a) The court erred in making and entering its Judgment and Decree dismissing action and Dissolving Preliminary Injunction, on December 22, 1947.

(b) The court erred in concluding that the Amended Temporary Restraining Order did not violate appellants' rights, guaranteed by the First Amendment to the Constitution (1) to freedom of speech, (2) to assemble peaceably.

(c) The court erred in concluding that the Amended Temporary Restraining Order was and is not void upon the ground it is vague, ambiguous and confusing.

(d) The court erred in considering appellees' motion under Rule 12 (d), as no appeal was taken from the order granting the preliminary injunction.

(e) The court erred in sustaining appellees' motion under Rule 12 (d).

(f) The court erred in denying appellants' motion to strike parts of the answer of Appellee Rice without affording appellants the opportunity to be heard thereon.

(g) The court erred in denying appellants' motion to strike parts of the answer of appellee Rice as the court was without jurisdiction to consider said parts.

(h) The court erred in concluding that the Amended Temporary Restraining Order was and is not void upon the ground that it was issued in violation of the provisions of the Norris-La Guardia Act.

(i) The court erred in concluding that the Amended Temporary Restraining Order was and is not void upon the ground that the District Court for the Territory of Hawaii has exclusive jurisdiction in the Territory of Hawaii to issue injunctions in labor disputes.

(j) The court erred in concluding that the Amended Temporary Restraining Order was and is not void upon the ground that it prohibited the free exercise of rights granted to members of a labor union by laws of the United States, to wit, the Norris-La Guardia Act.

(k) The Court erred in concluding that the Amended Temporary Restraining Order did not deprive appellants of free speech and assembly in violation of the first amendment to the Constitution of the United States.

(l) The court erred in its conclusion that a circuit court of the Territory is not a "court of the United States" as defined by and within the meanings of the Norris-La Guardia Act.

(m) The court erred in its conclusion that Congress manifested an intention to and did exclude from the coverage of the Act legislative courts of the United States.

(n) The court erred in failing to give to the Norris-La Guardia Act the same scope and coverage as the Clayton and Sherman Acts which the Norris-La Guardia Act amends.

(o) The court erred in failing to construe the Norris-LaGuardia Act as an exercise by Congress of its plenary power to legislate for the Territory of Hawaii.

(p) The court erred in construing the Norris-La Guardia Act as a narrow procedural act affecting only the jurisdiction of constitutional courts sitting in equity.

(q) The court erred in failing to give effect to the public policy of the United States declared in the Norris-LaGuardia Act.

(r) The court erred in holding that appellee Rice, as Judge of the Circuit Court of the Fifth Judicial Circuit had jurisdiction to issue a temporary restraining order in a case growing out of a labor dispute.

2. Appellants designate for printing the entire transcript of the record as certified to you.

Dated: Honolulu, T. H., this 18th day of March, 1948.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG.

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ GEORGE R. ANDERSEN,

Attorneys for Appellants.

[Endorsed]: Filed March 19, 1948.